Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-972

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

STANLEY APFELBAUM

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 15, 1978
CERTIORARI GRANTED MARCH 19, 1979

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-972

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

STANLEY APFELBAUM

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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DOCKET ENTRIES

DATE	PROCEEDINGS
1977	
Jul 25	True Bill.
Jul 25	Entry of Appearance of Robert E. Madden, Esq. for U.S.A., filed.
Jul 25	Order that deft. be released on $5,000 O.R. bail, filed.
Jul 25	Bond of deft. in the sum of $5000—O.R., filed.
Aug. 2	PLEA: NOT GUILTY to Cts: 1 & 2. Deft. allowed 10 days to file motions. Trial set for 8-24-77, filed. RAP
Aug. 2	Appearance of J.H. Slomsky, Esq. for deft., filed.
Aug. 3	Order that deft. have until 8-19-77 to file any post trial motions, filed. VA-C1.
	8-3-77 entered & copies mailed
Aug. 5	Govt's motion for order compelling deft. to submit to fingerprinting, memo and cert. of service, file
Aug. 15	Govt's motion for handwriting exemplar and memo, filed.
Aug. 19	Deft's answer in opposition to motion for handwriting exemplars, filed.
Aug. 19	Deft's answer in opposition to motion for an order compelling deft. to submit to fingerprinting, filed.
Aug. 19	Deft's motion for a bill of particulars and memo, filed.
Aug. 19	Deft's motion for Govt. Agents to produce, retain and preserve rough notes, filed.
Aug. 19	Deft's motion to suppress identification evidence, filed.
Aug. 19	Deft's motion to suppress statement, filed.

DATE	PROCEEDINGS

1977

Aug. 19 Deft's motion for a pretrial hearing and ruling on materiality, filed.

Aug. 19 Deft's motion to dismiss the indictment and memo, filed.

Aug. 19 Deft's motion for a reasonable continuance, filed.

Aug. 23 Govt's answer to deft's motion to suppress statements of the deft. and identification and cert. of service, filed.

Aug. 23 Govt's answer to deft's motion for a pretrial hearing and ruling on materiality and cert. of service, filed.

Aug. 23 Govt's answer to deft's motion for Govt. Agents to produce, retain, and preserve rough notes and cert. of service, filed.

Aug. 23 Govt's answer to deft's motion for a continuance and cert. of service, filed.

Aug. 23 Govt's answer to deft's motion to dismiss the indictment and cert. of service, filed.

Aug. 25 Minute Sheet re: hearing—all pretrial motions:

Motion to dismiss indictment—denied.
Motion for bill of particulars—Granted.
Motion for Govt. agents to retain notes—Granted.
Motion to suppress identification & statement—Denied.
Motion for continuance—Granted—trial set for 9-26-77.
Motion for pretrial hearing on materiality—C.A.V.
Motion to produce handwriting & fingerprinting exemplars—C.A.V., filed. VA

Aug. 25 Order that Clerk incorporate into the record all motions, etc. on file in Crim. 77-172, filed. VA

Aug. 25 Deft's motion to dismiss the indictment and memo of law; deft's motion and memo of law for a bill of particulars; deft's motion to suppress statement; motion

DATE	PROCEEDINGS

1977

for govt. agents to produce, retain and preserve rough notes; motion to suppress identification evidence; Govt's response to deft's motion to dismiss indictment; Govt's answer to deft's motion to suppress statement; Govt's answer to deft's motion for Govt. agents to produce, retain and preserve rough notes; Govt's answer to deft's motion for a bill of particulars and Gov't answer to deft's motion to suppress identification evidence transferred from Crim. 77-172, filed.

Aug. 25 Transcript of 6-1-77 transferred to this case from Crim. 77-172, filed.

Sep. 12 Order that deft. appear on 9-16-77 at office of Atty. for Govt. and provide an exemplar of handwriting, etc., filed. VA
9-13-77 entered & copies mailed

Sep. 20 Govt's proposed examination of prospective jurors, filed.

Sep. 27 Order of Court re: sequestration of jury and duties of Marshals, filed. VA
9-27-77 entered & copies mailed

Sep. 27 Waiver of presence of court stenographer at drawing of jury panel members, filed.

Sep. 27 Minute Sheet dated 9-26-77 re: Voir Dire, filed. VA

Sep. 28 Minute Sheet dated 9-27-77 re: Jury called and sworn. TRIAL—witnesses sworn, filed. VA

Sep. 30 Govt's proposed instructions, filed.

Sep. 30 Deft's proposed jury instructions, filed.

Sep. 30 Stipulation that transcripts of deft's grand jury appearances of Dec. 13, 1976 and Jan. 3, 1977 be made available to court for review prior to trial, filed.

DATE	PROCEEDINGS
1977	
Sep. 30	Minute Sheet dated 9-29-77 re: trial resumes.
	Motion for mistrial—denied; motion for judgment of acquittal—denied
	VERDICT: GUILTY to Cts. 1 & 2. Sentence set for 10-28-77, filed.
Oct. 6	Deft's motion and memo of law for a new trial and/or for a judgment of acquittal
Oct. 17	Govt's Answer to Deft's Motion for New Trial and/or For a Judgment of Acquittal, filed.
Oct. 27	Argued sur: deft's motion for new trial and/or judgment of acquittal—Denied, filed. VA
Oct. 28	SENTENCE: Ct. 1—Impr. 2 yrs. Ct. 2—like sent. imposed conc., filed. VA
Oct. 28	Judgment and Commitment Order, filed. VA 10-28-77 entered
Nov. 1	Minute Sheet dated 9-28-77 re: trial resumes, filed.
Nov. 1	Deft's notice of appeal received on 11-1-77 at 3:05 p.m., filed. 11-2-77 entered & copies mailed
Nov. 1	Copy of Clerk's notice to U.S. Court of Appeals, filed.
Nov. 10	Cert. copy of order of U.S. Court of Appeals setting briefing schedule, filed.
Nov. 23	Cert. copy of Order of U.S. Court of Appeals granting motion for appointment of counsel and counsel will be appointed, filed.

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

D.C. Crim. No. 77-317

Miscellaneous No. 76-157

[Filed October —, ——]

IN RE: GRAND JURY INVESTIGATION

ORDER

AND NOW, this 20th day of October, 1976, upon consideration of the Petition by the United States of America for an Order of Immunization and to compel the giving of testimony before the Grand Jury, and the Court, and following a hearing at which STANLEY APFELBAUM was present, with counsel, the Court finds as follows:

1. That STANLEY APFELBAUM has been called to testify or provide other information before the Grand Jury of the United States presently empaneled within this District; and

2. That in the judgment of said United States Attorney, said STANLEY APFELBAUM has refused to testify or provide other information on the basis of his privilege against self-incrimination; and

3. That in the judgment of the said United States Attorney, the testimony or other information from said STANLEY APFELBAUM may be necessary to the public interest; and

4. That the aforesaid Motion filed herein has been made with the approval of the Assistant Attorney General of the United States Department of Justice pursuant to the authority vested in him by Title 18, United States Code, Section 6003, and Title 28, Code of Federal Regulations, Section 0.175;

NOW, THEREFORE, IT IS ORDERED pursuant to Title 18, United States Code, Section 6002, that the said STANLEY APFELBAUM give testimony or provide other information which he refused to give or to provide on the basis of his privilege against self-incrimination as to all matters about which he may be interrogated before said Grand Jury, but that no testimony or other information compelled under this Order, or any information directly or indirectly derived from such testimony or other information, may be used against STANLEY APFELBAUM in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

IT IS FURTHER

ORDERED

that STANLEY APFELBUUM [sic] shall appear before the Grand Jury at 10:00 A.M. on the 1st day of NOVEMBER, 1976, at Room 4716, United States Courthouse, Philadelphia, Pennsylvania and answer all questions propounded to him there, relating to possible violations under Title 18, United States Code, Sections 1962, 1341, and 892, as well as in any other proceeding or trial which may result from the Grand Jury's current inquiry, and to produce any and all books, papers and other evidence requested as otherwise provided by law.

/s/ [Illegible]
J.

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Criminal Number: 77-317

Title 18, United States Code, Section 1623

[Filed: October 26, 1977]

UNITED STATES OF AMERICA

v.

STANLEY APFELBAUM

INDICTMENT

COUNT I

THE GRAND JURY CHARGES:

1. That on the 13th day of December, 1976, in the Eastern District of Pennsylvania, STANLEY APFELBAUM, defendant herein, under oath as a witness in a proceeding before a Grand Jury, duly impaneled and sworn in the United States District Court for the Eastern District of Pennsylvania, and inquiring in a matter then and there pending before the said Grand Jury, knowingly made a false declaration, that is to say:

2. That, at the time and place aforesaid, the Grand Jury inquiring as aforesaid, was conducting an investigation to determine:

a. whether Marvin Greenblatt who was the President of Chestnut Hill Lincoln-Mercury, Inc. and Francis Harry Brown, aka Harry Brown, who was the General Manager of Chestnut Hill Lincoln-Mercury, Inc. and other individuals had committed violations of the criminal laws of the United States;

b. whether Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, had, in fact, staged a robbery of Chestnut Hill Lincoln-Mercury, Inc., on April 16,

1975, in which Marvin Greenblatt and Harry Brown alleged $175,000.00 in cash was taken;

c. what motivated Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, to stage the robbery of Chestnut Hill Lincoln-Mercury, Inc.;

d. what Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, did with the cash that was received at Chestnut Hill Lincoln-Mercury, Inc. on April 16, 1975;

e. whether Marvin Greenblatt, Francis Harry Brown, aka Harry Brown, or Chestnut Hill Lincoln-Mercury, Inc. were in loanshark debt to Frank Sindone, Joseph Ciancaglini, John Berkey, Vincent "Tippy" Panetta, or others;

f. whether one of the purposes of staging the April 16, 1975, robbery of Chestnut Hill Lincoln-Mercury, Inc. was to repay loanshark debts;

g. whether Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, were engaged in making extortionate extensions of credit to others, through Chestnut Hill Lincoln-Mercury, Inc.;

h. whether the money Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, used to make extortionate extensions of credit was their own money or did they receive the funds from Frank Sindone, Joseph Ciancaglini or others;

i. why so many of the cars that were sold on the day of the staged robbery were sold to individuals that were closely associated with those involved in organized criminal activity;

j. whether Frank Sindone actually controlled Chestnut Hill Lincoln-Mercury, Inc.;

k. whether Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, had, in fact, defrauded Allstate Finance Company on a fraudulent $6,000.00 loan, and if so, what Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, did with the money;

l. whether Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, had, in fact, defrauded Herbert Bernstein out of $30,000.00 and if so, what Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, did with the money;

m. whether Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, had, in fact, defrauded American Express Company out of $40,000 and if so, what Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, did with the merchandise they purchased with their American Express cards;

n. whether Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, had, in fact, defrauded Eagle Clothes, Inc. out of $25,000 in merchandise and if so, what Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, did with the merchandise they obtained from Eagle Clothes, Inc.;

o. whether Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, had, in fact, defrauded Dr. Richard Lynch out of $20,000 and if so, what Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, did with the money; and

p. whether STANLEY APFELBAUM and F. Emmett Fitzpatrick were accessories after the fact or aided and abetted the staged April 16, 1975, robbery.

All of the above said issues were material to determine whether violations of the criminal laws of the United States had occurred, to wit, extortionate extensions of credit, racketeer influenced and corrupt organizations, mail fraud, conspiracy and accessory after the fact; Sections 891, *et seq.*, 1961 *et seq.*, 1341, 371 and 3, Title 18, United States Code, and violations of other criminal statutes of the United States.

3. In attempting to determine the answers to the questions posed in paragraphs two (2) above, and in gathering the evidence necessary to determine whether an indictment for violations of the laws of the United States should be returned, the Grand Jury had before it certain allegations and information including:

a. that the April 16, 1975, $175,000 robbery of Chestnut Hill Lincoln-Mercury, Inc. was, in fact, staged by Francis Harry Brown, aka Harry Brown, and Marvin Greenblatt;

b. that STANLEY APFELBAUM was at Chestnut Hill Lincoln-Mercury, Inc. on April 16, 1975, the night of the staged robbery;

c. that Francis Harry Brown, aka Harry Brown, and Marvin Greenblatt were in loanshark debt to Frank Sindone and Vincent "Tippy" Panetta;

d. that Francis Harry Brown, aka Harry Brown, and Marvin Greenblatt were making extortionate extensions of credit to other individuals through Chestnut Hill Lincoln-Mercury, Inc.;

e. that a few days after the staged robbery of Chestnut Hill Lincoln-Mercury, Inc., Francis Harry Brown, aka Harry Brown, and Marvin Greenblatt met with STANLEY APFELBAUM in his office in City Hall, and that STANLEY APFELBAUM, Marvin Greenblatt and Francis Harry Brown, aka Harry Brown, then went and saw F. Emmett Fitzpatrick in the District Attorney's Office;

f. that on or about August of 1975, Francis Harry Brown, aka Harry Brown, left the Philadelphia area, in a clandestine manner without leaving any forwarding address;

g. that the Federal Bureau of Investigation was able to trace Francis Harry Brown, aka Harry Brown, to the Fort Lauderdale, Florida, area. While trying to locate Francis Harry Brown, aka Harry Brown, the Federal Bureau of Investigation discovered that STANLEY APFELBAUM of the Philadelphia District Attorney's office was also trying to find Francis Harry Brown, aka Harry Brown;

h. that when the Federal Bureau of Investigation found Francis Harry Brown, aka Harry Brown, he told them that F. Emmett Fitzpatrick had lent him (Francis Harry Brown, aka Harry Brown) $10,000 prior to Brown's leaving the Philadelphia area. However, Brown refused to explain the details of the loan or what he did with the money;

i. STANLEY APFELBAUM told Federal Bureau of Investigation agents that he (STANLEY APFELBAUM) was trying to locate Francis Harry Brown, aka Harry Brown, in Florida in December of 1975 because he (STANLEY APFELBAUM) had lent Francis Harry Brown, aka Harry Brown, $10,000 prior to the staged robbery of Chestnut Hill Lincoln-Mercury, Inc.;

j. STANLEY APFELBAUM told the Federal Bureau of Investigation that he (STANLEY APFELBAUM) had been co-signer of the $10,000 loan, and that it was an extremely complicated arrangement;

k. STANLEY APFELBAUM would not elaborate on the details of the $10,000 loan;

l. STANLEY APFELBAUM told the Federal Bureau of Investigation that the main reason he was attempting to contact Francis Harry Brown, aka Harry Brown, was to get this money back and that the Philadelphia District Attorney's office had no active investigation of the Chestnut Hill Lincoln-Mercury, Inc. robbery;

m. F. Emmett Fitzpatrick told Federal Bureau of Investigation agents that he had never lent Francis Harry Brown, aka Harry Brown, any money nor had he ever arranged for or signed for any loan for Francis Harry Brown, aka Harry Brown;

n. Francis Harry Brown, aka Harry Brown, refused to answer any questions before the Grand Jury;

4. Based upon the information and questions contained in paragraph two (2) and three (3) above, the Grand Jury desired to question STANLEY APFELBAUM concerning the following:

a. what was STANLEY APFELBAUM's relationship with Francis Harry Brown, aka Harry Brown, and Marvin Greenblatt;

b. had Francis Harry Brown, aka Harry Brown, or Marvin Greenblatt said anything to STANLEY APFELBAUM on April 16, 1975, the night of the staged robbery, that would be helpful to the Grand Jury in proving that Francis Harry Brown, aka Harry Brown, and Marvin Greenblatt, in fact, staged the robbery or why they staged the robbery or what they did with the money;

c. had Francis Harry Brown, aka Harry Brown, or Marvin Greenblatt said anything to STANLEY APFELBAUM when they visited the District Attorney's office a few days after the robbery that would be helpful to the Grand Jury in proving that Francis Harry Brown, aka Harry Brown, and Marvin Greenblatt, in fact, staged

the robbery, why they staged the robbery, or what they did with the money;

d. did STANLEY APFELBAUM or F. Emmett Fitzpatrick either loan Francis Harry Brown, aka Harry Brown, ten thousand dollars ($10,000) or in some way arrange for a loan to Francis Harry Brown, aka Harry Brown, of ten thousand dollars ($10,000) and, if so, why did Francis Harry Brown, aka Harry Brown, tell STANLEY APFELBAUM that he needed the money;

e. did Francis Harry Brown, aka Harry Brown, or Marvin Greenblatt tell STANLEY APFELBAUM that the ten thousand dollars ($10,000) loan was needed by Francis Harry Brown, aka Harry Brown, or Marvin Greenblatt to repay loanshark debts to Frank Sindone or others;

f. did Francis Harry Brown, aka Harry Brown, or Marvin Greenblatt ever tell STANLEY APFELBAUM that Frank Sindone, Philip Testa or Joseph Ciancaglini either owned or controlled Chestnut Hill Lincoln-Mercury, Inc.;

g. if STANLEY APFELBAUM did not, in fact, loan Francis Harry Brown, aka Harry Brown, ten thousand dollars ($10,000), why did he tell the Federal Bureau of Investigation that he had;

h. why was STANLEY APFELBAUM in Florida trying to locate Francis Harry Brown, aka Harry Brown, in December of 1975? Was he trying to recover the ten thousand dollars ($10,000)? Was he trying to find out if Francis Harry Brown, aka Harry Brown, had agreed to cooperate with the Grand Jury in their investigation? Was STANLEY APFELBAUM attempting to gain assurance from Francis Harry Brown, aka Harry Brown, that he (Francis Harry Brown, aka Harry Brown) was not cooperating with the Federal Grand Jury?

5. That at the time and place alleged in paragraph one (1), herein, STANLEY APFELBAUM, defendant herein, appeared as a witness before the aforesaid Grand Jury, and then and there being under oath as alleged in paragraph one (1) made the following declarations:

Q. It's my understanding you went down to Florida in December of 1975, approximately the 5th of December.
A. That's right. That's what I said before.
Q. Now, at that time did you see Mr. Brown?
A. No. I told you I went down there for a fishing trip, not fishing trip, to look at a boat for Dr. Slawek and then go to Puerto Rico.
Q. And you only stayed in Florida about three days?
A. About three or four days, something like that. I'm not sure exactly. Don't hold me to three or four. It was around that. I spent a total time of about two weeks between the two, including flight time and so on.
Q. When you were down there, did you call up Harry Brown to talk to him?
A. No.
Q. Did you know he was down there?
A. I heard he was down there. Somebody had said he was down there.
Q. Did you do anything to attempt to contact Mr. Brown when you were down there?
A. Not that I remember. I don't think I knew where he was at.
Q. Well, how did you find out where he was at eventually?
A. Somebody had told me about it and I don't know who, but they told me he was down in Florida.
Q. Okay. By this time, had the papers reported that Harry Brown was missing?
A. I don't believe so. I don't know. I'm not sure. I'm trying to recollect. I don't know whether they said he was missing or not.
Q. So, in December, when you were down there, you're sure you didn't try to contact Harry Brown; is that correct?
A. Yeah, Yeah.
Q. Did you try to locate Harry Brown when you were down there?
A. No.

Q. You're sure?
A. Positive.
Q. Now, did you tell anyone that you were trying to locate Harry Brown in Florida?
A. Not that I remember.
Q. And, you know, you were on your vacation and you were looking at the boats, so you weren't running around trying to find somebody you didn't know where they were, is that correct?
A. Yeah.
Q. And you would remember that?
A. Yeah, I think I would.

WHEREAS, in truth and fact, as STANLEY APFELBAUM then well knew, he had tried to locate Francis Harry Brown, aka Harry Brown, in Florida, during December of 1975.

6. These false statements tended to influence, impede and hamper the Grand Jury from pursuing:

a. the nature of STANLEY APFELBAUM's relationship with Francis Harry Brown, aka Harry Brown;
b. why STANLEY APFELBAUM was going to Florida in an attempt to locate Francis Harry Brown, aka Harry Brown;
c. whether STANLEY APFELBAUM, in fact, did locate Francis Harry Brown, aka Harry Brown, in Florida in December of 1975 and if so, whether they discussed any of the allegations or information contained in paragraphs two (2) or three (3) above and what the nature of those discussions were.
d. whether STANLEY APFELBAUM discussed the ten thousand dollar ($10,000.00) loan with Francis Harry Brown, aka Harry Brown, and what Francis Harry Brown, aka Harry Brown, told him (STANLEY APFELBAUM) that he (Harry Brown) needed the ten thousand dollars ($10,000.00) for;
e. whether STANLEY APFELBAUM discussed the Grand Jury investigation of Chestnut Hill Lincoln-Mercury, Inc., with Francis Harry Brown, aka Harry Brown, and/or Marvin Greenblatt;

f. whether STANLEY APFELBAUM attempted to have Francis Harry Brown, aka Harry Brown, not cooperate with the Federal Grand Jury or to hide STANLEY APFELBAUM's involvement in any illegal activity;
g. why Francis Harry Brown, aka Harry Brown, left the Philadelphia area in the manner he did.

All in violation of Title 18, United States Code, Section 1623.

COUNT II

THE GRAND JURY FURTHER CHARGES:

1. That on the 13th day of December, 1976, in the Eastern District of Pennsylvania, STANLEY APFELBAUM, defendant herein, under oath as a witness in a proceeding before a Grand Jury, duly impaneled and sworn in the United States District Court for the Eastern District of Pennsylvania, and inquiring in a matter then and there pending before the said Grand Jury, knowingly made a false declaration, that is to say:

2. The Grand Jury incorporates by reference and realleges all of the allegations of paragraphs two (2), three (3), and four (4) of Count I of this indictment as if set forth in full herein and further charges:

3. That on the 13th day of December, 1976, at the place alleged in paragraph one (1), herein, STANLEY APFELBAUM, defendant herein, appeared as a witness before the aforesaid Grand Jury, and then and there being under oath as alleged in paragraph one (1), made the following declarations:

Q. Did you ever tell anyone that you had lent any money to Harry Brown or Marvin Greenblatt?
A. No, sir.
Q. Did you ever tell anyone that you had been involved in a loan to Harry Brown or Marvin Greenblatt?
A. No, sir.

Q. You never told anyone that you had been involved in any kind of loan to Harry Brown?
A. No.

5. That on the 3rd day of January, 1977, at the place alleged in paragraph one (1), herein, STANLEY APFELBAUM, defendant herein, appeared as a witness before the aforesaid Grand Jury, and then and there being under oath as alleged in paragraph one (1), made the following declarations:

Q. Did you ever tell the F.B.I.—you denied last week that you told anyone you had lent money to Harry Brown?
A. That's right.
Q. You denied that?
A. How could I lend money when I don't have any money myself, Mr. Friedman?
Q. So, you didn't tell the F.B.I. or anyone that you had lent money to Harry Brown?
A. No, sir.
Q. Is that right?
A. That's right.

* * * *

Q. Now, sir, in 19—what, 1975 and 1976, did you have $10,000?
A. Did I what?
Q. Have $10,000?
A. I told you I didn't have $10,000.
Q. And, you didn't lend $10,000 to Harry Brown, is that right?
A. No, sir.
Q. And, you testified that way last week.
A. Yeah.
Q. You testified last week that you never told anyone that you had lent $10,000 to Harry Brown; is that right?
A. That's right, sir.
Q. Okay. And, you still persist in that testimony?
A. Uh-huh. How can I lend it to him when I didn't have it? I had to go to the bank and borrow money myself.

Q. You still persist in that testimony?
A. Yes, sir.
Q. You never told the F.B.I. that you lent Harry Brown $10,000; is that right?
A. If I did, it was ridiculous.
Q. Did you tell them that?
A. I don't know. I don't think I did.
Q. Do you have any recollection of telling them that?
A. No, no, sir.

WHEREAS, in truth and fact as STANLEY APFELBAUM then well knew, he (STANLEY APFELBAUM) had told someone, to wit, agents of the Federal Bureau of Investigation, that he (STANLEY APFELBAUM) had lent ten thousand dollars ($10,000) to Harry Brown.

5. These false statements tended to influence, impede and hamper the Grand Jury from pursuing:

a. the nature of STANLEY APFELBAUM's relationship with Francis Harry Brown, aka Harry Brown;

b. what Francis Harry Brown, aka Harry Brown, told STANLEY APFELBAUM the purpose of the ten thousand dollar ($10,00.00) loan was;

c. whether Francis Harry Brown, aka Harry Brown, told STANLEY APFELBAUM that the ten thousand dollars ($10,000.00) was to pay off loanshark debts to Frank Sindone or others;

d. whether Francis Harry Brown, aka Harry Brown, told STANLEY APFELBAUM that the ten thousand dollars ($10,000.00) was going to be lent out to others by Francis Harry Brown, aka Harry Brown, or Marvin Greenblatt at usurious interest rates;

e. if STANLEY APFELBAUM did not, in fact, lend Francis Harry Brown, aka Harry Brown, ten thousand dollars ($10,000.00), why did he tell the Federal Bureau of Investigation that he had lent Francis Harry Brown, aka Harry Brown, ten thousand dollars ($10,000.00);

f. did F. Emmett Fitzpatrick or Francis Harry Brown, aka Harry Brown, ask STANLEY APFELBAUM to tell the Federal Bureau of Investigation that he (STANLEY APFELBAUM) had, in fact, lent ten thousand dollars ($10,000.00) to Francis Harry Brown, aka Harry Brown;

g. whether STANLEY APFELBAUM and Francis Harry Brown, aka Harry Brown, discussed any of the allegations or information contained in paragraphs two (2) or three (3) of Count I of this Indictment and what the nature of those discussions were.

All in violation of Title 18, United States Code, Section 1623.

A TRUE BILL:

_____

Foreman

_____

DAVID W. MARSTON
United States Attorney
Eastern District of Pennsylvania

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____

Criminal No. 77-317

THE UNITED STATES OF AMERICA

vs.

STANLEY APFELBAUM

_____

September 27, 1977

_____

BEFORE: THE HONORABLE DONALD W. VAN ARTSDALEN
(and sequestered Jury)

_____

APPEARANCES:

ROBERT MADDEN, ESQ.,

—and—

RONALD COLE, ESQ.,
Assistant U. S. Attorneys

JOEL SLOMSKY, ESQ.,
Attorney for the Defendant

PORTIONS OF PROCEEDINGS IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
HELD ON SEPTEMBER 27, 1977

* * * *

[34] MR. MADDEN: The next witness will be the court reporter from the Grand Jury.

The Government has sat down with Mr. Slomsky in an attempt to see if we couldn't agree as to exactly what

portions of the Grand Jury transcript would go in. We have delineated approximately eighty percent or [35] seventy percent of the Grand Jury testimony. However, there are points that we disagree at. I have copies of the Grand Jury transcript and I have highlighted, for the Court, the areas where we do disagree. I would think that perhaps if we could settle those disagreements, have rulings on those disagreements prior to bringing the witness in it would alleviate the necessity of having to object during the witness' testimony and also might allow the Government to give Grand Jury transcripts to the jurors so that they can better follow the testimony.

THE COURT: All right. Do you have those?

MR. MADDEN: Yes, I do, your Honor.

I first hand up the December 13, 1975 testimony.

THE COURT: Suppose we have that marked as G-1 for purposes of identification.

MR. MADDEN: That is the number I intend to give it.

THE COURT: I am marking that G-1 on here myself.

Is it my understanding that this portion [36] of—or that all of G-1, counsel agree, may go to the jury or can be admitted, if identified by the court reporter, with the exception of certain portions that are underlined or red lined in some way?

MR. SLOMSKY: No. I have received G-1. I received it last night, your Honor, and I do have a limited number of changes. Perhaps there was some misunderstanding between Mr. Madden and myself, but they're not extensive and I think I can relate them to the Court very quickly.

With respect to Pages 10 and 11 of G-1, I object to those being read to the jury.

THE COURT: Any portion of them?

MR. SLOMSKY: Yes. All of Page 10 and Page 11.

THE COURT: All right. What else?

MR. SLOMSKY: With respect to Page 28, the question at the bottom of the page: "Was Mr. Greenblatt ever there?" To the bottom of that page and the first answer on Page 29.

THE COURT: All right.

MR. SLOMSKY: On page 31 the first [37] question and answer above the pink portion on the right beginning: "Has Emmett Fitzpatrick—" and the answer is "No" also deleted.

With respect to Page 98, the last question and answer on that page, question beginning: "Now at that time—" and the answer "No, sir."

Of course I also object to all of the questions and answers delineated with the pink on the right-hand portion of the page.

THE COURT: All right.

MR. SLOMSKY: Perhaps we can have the other exhibit marked G-2.

THE COURT: All right.

MR. MADDEN: This is January 3rd, 1977.

THE COURT: Are there other things on G-2 other than what are marked on the pink?

MR. SLOMSKY: Yes, sir. On Page 42, the last answer. Page 56.

Now there is an answer which, from Page 55, which is completed on the top line of Page 56. Mr. Madden has this page marked as objected to. I have no objection to the [38] balance of this page being read.

THE COURT: Wait. It's shown here that you object to all of Page 55.

MR. SLOMSKY: That is correct.

THE COURT: Well, all of Page 53, 54, 55 and 56?

MR. SLOMSKY: Now there is an answer on Page 56, on the very top line, which is to be completed from Page 55.

THE COURT: All right.

MR. SLOMSKY: Now I have no objection to reading the balance of that page.

THE COURT: Okay.

MR. SLOMSKY: They have it marked objected to.

THE COURT: Yes.

MR. SLOMSKY: Page 79. The very last question asked by Mr. Friedman is not objected to, going over to Page 80.

Page 89 is a question towards the—above the middle of the page: "You went down to Florida in March for a weekend; is that correct?" I have no objection to reading from there down to the bottom of page 89.

[39] THE COURT: Gentlemen, my only problem is that apparently in order—the manner in which you wish to present this, you wish to present this next to the jury. I have to rule on this at this time. I wish counsel had advised me of this prior to the time and that's the reason I wanted a conference last week, to get this matter straightened out before so that we wouldn't have interruptions with the jury trial.

MR. SLOMSKY: If your Honor please, may I just be heard on my position with respect to this Grand Jury testimony?

THE COURT: Yes.

MR. SLOMSKY: The Grand Jury testimony, it must be remembered, is immunized testimony, testimony that was compelled pursuant to a Court Order.

THE COURT: You can bring that out in the evidence.

MR. SLOMSKY: It's not something I want to bring out in evidence, but under the case United States versus Hockenberry, which I think the Court is familiar. The Government can only introduce Grand Jury [40] testimony to establish the corpus delicti of the offense. I have agreed to go beyond that because I want certain testimony in and Mr. Madden agrees that certain testimony can go in. For Mr. Madden to go beyond that and for the Court to say that other testimony, which I object to, can go in, which will be used against Mr. Apfelbaum, in the arguments of counsel and the jury hearing this, would be a violation of Hockenberry.

This is a fundamental disagreement with Mr. Madden and I.

THE COURT: I think your position is correct about that, but on the other hand, the immunity, of course, doesn't apply to perjury, as we all know, or to false declarations under which he's presently charged and testimony that he gives can be used against him for that purpose.

Now I am not sure that that means that it will be strictly limited to these questions and answers for which he is charged with giving false, making false statements.

What's your position?

MR. MADDEN: Your Honor, if I may, [41] Hockenberry involved an immunized witness who came in before the Grand Jury. While immunized before the Grand Jury he testified truthfully, in part. The part that he testified truthfully to was in forging certain affidavits and complaints that were made under oath. Now he was later indicted for perjury on an unrelated incident and when he attempted to testify in his own behalf at trial the Government, in order to impeach his credibility, used his truthful admissions of wrongdoing.

Now I think the Court says exactly what they were considering here in Hockenberry in the first paragraph. They said we must decide whether the trial judge committed error in admitting into evidence, against the accused, at his perjury trial, a truthful statement he had made to the Grand Jury on the same occasion as the alleged false statement, but unrelated to it.

They go on to say, your Honor, that there is three elements that have to be found:

Number one, the statement made to the [42] Grand Jury was parallel with the privilege under the Fifth Amendment.

Now much of this testimony, your Honor, the Government contends is false. Much of the testimony that Mr. Slomsky wishes to keep out is false testimony. This false testimony should be allowed in and the Government should be allowed to show its falsity, number one, to show that Mr. Apfelbaum had a pattern or design of deceit and denials in the Grand Jury. Number two, that they show under 404B, specifically admissible as to show a pattern of deceit; that they're relevant to show his motive, his motive for lying. Much of them refer back to whether or not—

THE COURT: The problem with that is, I would agree, of course, that normally you can do that under the rules of evidence, but they do not apply to situations where a person is being compelled to testify.

MR. MADDEN: Your Honor, he's being compelled to testify. Cases have held that the protection against self-incrimination does not justify perjury.

THE COURT: Of course.

[43] MR. MADDEN: Nothing Mr. Apfelbaum says can be used against him except in a prosecution for perjury and when the Government comes forward with statements that he made that are false, in that Grand Jury, he is in no way protected by that immunity grant from those false statements and most of the information that Mr. Slomsky is concerned with relates to what the Government considers false testimony in the Grand Jury, perjured testimony.

MR. SLOMSKY: May I respond?

THE COURT: Yes.

MR. SLOMSKY: Mr. Apfelbaum is charged with two specific instances of lying to the Grand Jury.

Now the Government says "Well, he may have lied in four other instances. We want to introduce the balance of the Grand Jury testimony and use it against him to prove other false declarations." He's not charged with other false declarations. That's immunized testimony which cannot be used against him except in those prosecutions may be false declarations with which he's not [44] charged; but to bring it in this case would be doing exactly what is prohibited by Hockenberry, using the balance of the compelled statements against the defendant to prove something, to prove other wrongdoing, with which he is not charged, and that's where the violation of Hockenberry comes in.

MR. MADDEN: Your Honor, I cannot agree that we have a violation of Hockenberry because of the very fact that Mr. Apfelbaum, whether immunized, whether declaring his right against self-incrimination or even being warned of his right against self-incrimination has no right to lie before the Grand Jury or commit perjury.

THE COURT: I agree that, of course, is perfectly correct and true, but I think what defense counsel is saying, in effect, all right, if he committed other acts of false swearing he could have been charged with those other acts of false swearing. Not having been charged

with that, it's not appropriate to show other acts of false swearing as evidence that these two things were false swearing.

[45] Now the problem I see with that is it seems to me when we go to the question of whether he knowingly lied or not, perhaps you can, seems to me you ought to be able to show other instances of false statements that may have been made before the Grand Jury.

MR. SLOMSKY: Well, if your Honor please, the real question is did he knowingly lie with respect to these two particular instances.

THE COURT: Correct.

MR. SLOMSKY: The question is not whether or not in telling the Grand Jury that—I say this figuratively—I didn't beat my wife or I did other things like that or I met Harry Brown in a strange place one day or something like that. The question is not whether or not he knowingly lied in most situations. That's what the Government wants to bootstrap with.

My client is charged with a very specific offense and this is immunized testimony which cannot be loosely used against him in this prosecution and if the Government wished to indict him for lying in [46] other instances they had opportunities to do it and didn't do it; and the danger is that, as is always a danger, not only will the Government use, they may just use answers against him because of the way he said it or something, but also use it because Mr. Madden wants to argue "Look, here's a $10,000.00 loan" and "Look what he told the Grand Jury" when he's just not charged with that and it's just unfair to permit it.

MR. MADDEN: These false statements that we are alleging are not unrelated to the charges in the indictment. They refer directly back to the charges in the indictment.

Your Honor, I would refer the Court to United States versus Sweig, 441 Fed. 2nd, 114, which is a Second Circuit case, 1971, where prosecution for perjury the Government was allowed to introduce other false testimony of the accused to show knowledge that he was making false statements.

Your Honor, in addition I have a case that was decided after, Tramaunti, which is 500 Fed. 2nd, 1334, Second Circuit, 1974. [47] That discusses Hockenberry and discusses where Hockenberry fits at, and that is if statements were truthful statements and admissions of guilt they cannot come in. If they are false statements they can.

MR. SLOMSKY: Well, your Honor would have to hold another mini trial to determine whether or not the statements that the Government wants in are false. How else can you make that decision?

THE COURT: I don't think that's a matter for me to determine.

MR. SLOMSKY: Well, I don't want to beg the question. I think my position is clear. There are portions of the Grand Jury testimony which would damage Mr. Apfelbaum in the eyes of the jury. They're compelled statements and they can't be loosely read to the jury by the Government.

MR. MADDEN: Your Honor, I don't believe there are any such statements that are compelled truthful statements that are damaging to Mr. Apfelbaum.

MR. SLOMSKY: Why read them?

MR. MADDEN: Truthful statements.

[48] THE COURT: All right. The objection is overruled and to the extent that these, that the Grand Jury testimony is properly identified, those portions that have been offered in G-1 and G-2 will be received into evidence.

MR. SLOMSKY: Thank you very much, your Honor.

MR. MADDEN: The next witness the Government would like to call will be Katherine Black.

THE COURT: Are you ready to proceed before the jury?

MR. SLOMSKY: My recollection—some of those questions I don't know if I had an opportunity to read it, uses words like loan-sharking, robbery, et cetera, and that was really my concern. You run into the same danger that you run into, as if the Grand Jury testified in the presence of the jury.

THE COURT: I don't know. I didn't see any of those.

MR. MADDEN: I thought we took them all out. I didn't notice any, quite frankly. I agree I went through them rather hastily, but [49] as a matter of fact—

MR. SLOMSKY: Page 28 of G-1, very last question.

MR. MADDEN: I believe they're all out. I may be wrong.

THE COURT: I saw nothing there of that nature or type of thing and that's one reason I ruled the way I did; that it seemed to me that many of these questions and answers simply go along with and are consistent with statements that are made, that are alleged to be the actual false statements.

Ask the jury to come in, please. I don't believe there are any there of that nature, Mr. Slomsky. I may be incorrect.

(At this time the jury enters the courtroom.)

THE COURT: Members of the jury, I am sorry about the delay, but there were certain matters that we could not determine until after the jury had been selected and had to be determined outside of your presence.

MR. MADDEN: Your Honor, before I call my next witness I would request to read a stipulator to the jury.

[50] THE COURT: All right.

Let me point out again, although this was mentioned in opening argument, a stipulation is an agreement between the two attorneys as to certain facts and to the extent that there is such a stipulation you may consider it as you would any other evidence. It is evidence in the case and you may consider it as a fact or established facts.

MR. MADDEN: Thank you, your Honor.

It is hereby stipulated and agreed by counsel for the United States and by counsel for the defendant, with the expressed consent of the defendant Stanley Apfelbaum: One, if called to testify, the clerk of the United States District Court for the Eastern District of Pennsylvania would testify that the Federal Grand Jury, sitting in Philadelphia, Pennsylvania, on December 13, 1976 and

January 3, 1977, before which the defendant Stanley Apfelbaum appeared, was duly impaneled, and that a quorum was present on those dates.

Number two, if called to testify the deputy forelady of the Grand Jury would testify that on December 13, 1976, she placed [51] the defendant Stanley Apfelbaum under oath.

Three, if called to testify the foreman of the Grand Jury would testify that on January 3, 1977, he placed the defendant Stanley Apfelbaum under oath.

Four, if called to testify, Katherine Black, a court reporter, would testify that the transcripts of the defendant Stanley Apfelbaum's Grand Jury appearances are a full and accurate representation of what was said before the Grand Jury.

THE COURT: All right. I would suggest that stipulation be marked for identification as G-3.

MR. MADDEN: I have so marked it.

THE COURT: All right.

MR. MADDEN: The Government would like to call Katherine Black to the stand, please.

KATHERINE BLACK, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MADDEN:

Q. Mrs. Black, by whom are you employed?
A. Knipes-Cohen Associates.
[52] Q. And what is your position with Knipes-Cohen?
A. Court reporter.
Q. And directing your attention to December 13, 1975, were you assigned a specific job?
A. Yes, I was.
Q. What was that job?
A. Court reporter to the Grand Jury.
Q. And will you please explain a little bit to the jury what a court reporter does?
A. We take the testimony of witnesses who are scheduled to testify at the Grand Jury.

Q. How did you take that testimony?
A. By stenotype machine.
Q. Then do you have that testimony transcribed?
A. Yes, I do.
Q. Have you had an opportunity to review the testimony of Mr. Apfelbaum before the Grand Jury?
A. Yes, I have.
Q. And did that transcript adequately and accurately reflect what was said in the Grand Jury?
A. Yes, it did.

MR. MADDEN: At this time may I approach the witness, please?

THE COURT: Yes.

MR. MADDEN: Your Honor, I would request [53] permission to give copies of Government Exhibit G-1 to the jurors.

MR. SLOMSKY: I think the witness ought to identify G-1 first.

THE COURT: I think that is correct.

BY MR. MADDEN:

Q. Would you look at Government Exhibit G-1, please?
A. Yes.
Q. Can you identify what it is?
A. It's the transcript of Mr. Apfelbaum's testimony before the Grand Jury.
Q. And that is not a complete transcript, is it?
A. No, it's not.
Q. Are portions deleted?
A. Yes, they are.

MR. MADDEN: Your Honor, at this time I would request permission to give—I believe we have marked that Government Exhibit G-1. However, your Honor, I will mark another one. I believe the Court has that copy.

THE COURT: Yes. You should have another one marked as G-1.

May I see that for just a moment, [54] please?

All right. You wish to cross examine as to this?

MR. SLOMSKY: No, your Honor.

THE COURT: G-1. You asked leave that it be shown

to the jurors, did you not? You offered G-1 into evidence?

MR. MADDEN: Yes, your Honor.

THE COURT: G-1 will be received subject to my prior ruling.

(At this time G-1 is received into evidence.)

MR. MADDEN: I would ask the Agent be permitted to pass out copies of G-1 to the jury.

THE COURT: Permission will be granted to do so.

MR. MADDEN: Thank you, your Honor.

Your Honor, I imagine we should have a short sidebar.

(The following takes place at sidebar in the presence of but out of the hearing of the jury.)

MR. MADDEN: Your Honor, Miss Black, through agreement between Mr. Slomsky and I, [55] is going to read the answers and I will read the questions so that the jury can better understand it, but I wanted—I would like you to—either myself or your Honor to explain her function.

MR. SLOMSKY: Judge, with all due respect to Mr. Madden, I have agreed to more things than in my recollection.

I would like her to read the questions and answers. I don't want the danger of some intimation or something. Let the witness read the questions and answers. She took it down.

MR. MADDEN: I think it would be easier for the jury to understand if I was permitted to read the questions and another party being the answering party.

MR. SLOMSKY: They have the transcript in front of them.

I might say, for the record, that pink line on the right-hand side of the page is not on the copies given to the jurors.

THE COURT: That's correct. That's my understanding. That's the reason I wanted to look at it, verify that was true.

[56] MR. SLOMSKY: I have no objection if the judge's law clerk wished to read the question and the witness read the answer.

(End of sidebar discussion.)

THE COURT: Ladies and gentlemen, so that you will be able to better follow the matter, we are going to have the questions and answers now read to you in the record, although you have the transcripts there before you, my law clerk, who is a neutral party, shall we say, in this matter, no way involved as an adversary, will read the questions. The witness who is on the witness stand will read the answers. That way we think you will be also to better follow it.

(The following questions are read by Howard Finkelstein and the answers are read by the witness Katherine Black.)

"Question: Now, sir you know Harry Brown; is that right?

"Answer: Yes, sir.

"Question: How long have you known Harry Brown?

"Answer: The City bought the first Lincoln for Mr. Fitzpatrick before he came [57] into office. They presented it to him January 7th, the day he took office. We did not buy the Lincoln as a lot of people think. It was given to him by either Richard Sprague or Eugene Alessandroni, who had my job at that time. They bought the car. It came through the City. It was purchased on low bid, I imagine.

"Question: How long have you known Harry Brown?

"Answer: Only since I was taking the car to be serviced.

"Question: When was that?

"Answer: After 1974. The first 12,000 miles, I have to service the car by the agency, It was done free. After that, I take the car to 2nd and Hunting Park Avenue where the City does it.

"Question: Now, the first time that you met Harry Brown was in 1974; is that correct?

"Answer: That's correct to the best of my ability, yes. I met him when I had to take the car to be serviced.

"Question: Do you have any recollection [58] of meeting him prior to 1974?

"Answer: No. If I did, I didn't know who he was.

"Question: Now, when was the first time you met Marvin Greenblatt?

"Answer: Same thing. I never knew him before either until I had to take the car to be serviced.

"Question: Now, did you—did you or Mr. Fitzpatrick ever lend any money to Harry Brown or Marvin Greenblatt?

"Answer: No way, sir.

"Question: Did you ever tell anyone that you had lent any money to Harry Brown or Marvin Greenblatt?

"Answer: No, sir.

"Question: Did you ever tell anyone that you had been involved in a loan to Harry Brown or Marvin Greenblatt?

"Answer: No, sir.

"Question: You never told anyone that you had been involved in any kind of loan to Harry Brown?

"Answer: No.

"Question: And you never—

[59] "Answer: I never, I never lent him any money. As far as I know, Mr. Fitzpatrick never lent him any money. Mr. Fitzpatrick has his own problems. I don't think he could lend him any money.

"Question: Sir, when was the last time you saw Harry Brown?

"Answer: Last January. I'm trying to think. Last—either last—let me see. Last December or January, I'm not sure. I'm not sure of the exact date.

"Question: And where did you see him?

"Answer: In Florida.

"Question: And where in Florida?

"Answer: Where he resides.

"Question: Where is that?

"Answer: Somewhere in Fort Lauderdale, on the outskirts of Fort Lauderdale.

"Question: Were you there on official business?

"Answer: No. I was there on a vacation. I knew he

was down there and I stopped to see him. It was his anniversary and I even brought over $35.00 worth of delicatessen because I felt sorry for him. Because I knew him from [60] before, he had a broken leg and I used to bring food to his house when he had a broken leg.

"Question: What did you say to him and what did he say to you when you saw him at that time?

"Answer: We just kissed and embraced, not a kiss like, you know, a man and woman. We just hugged each other because we hadn't seen each other for a long time and he knows what I done for him when he was sick laying on his back. I used to bring him food and that's about it.

"Question: Did you lend $10,000 to Harry Brown?

"Answer: No way. I have my own problems.

"Question: Did you ever tell anyone that you lent $10,000 to Harry Brown?

"Answer: No.

"Question: Sir, where do you have bank accounts?

"Answer: I.V.B.

"Question: And do you have a checking account there?

"Answer: Yes, I do.

"Question: And do you have a savings [61] account there?

"Answer: It's not a savings—it's called Snap Savings. It's part of my checking account. They take a dollar a week—a dollar a month out for me and I have one set up for my son who's fourteen years only. It's in my name in trust to Joel A. Apfelbaum and I think each month they take a dollar out of the checking account.

"Question: Do you have any other accounts?

"Answer: Yes, I do, sir. I have three accounts there. I have a commercial loan for 3,500. I have a time savings loan which was—it was a commercial loan converted into a time savings. That was for 5,500. I don't know how much I owe on that. And then, I also have what they call an Executive Credit. I asked for an American Express card and Mr. Orem, who—by the way, Harry Brown introduced me to Mr. Orem. That's how I knew about the bank. That was the connection with the bank. That's how I knew.

At that time, I was in trouble with the finance companies and they helped me get out of it. Finance companies are the worst.

"Question: What finance companies were [62] you in trouble with?

"Answer: Household Finance and Greater Finance.

"Question: And where did you have your accounts?

"Answer: In Frankford on Frankford Avenue.

"Question: Which particular branch?

"Answer: And, they were dunning me. They kept on calling me at the house and at the work.

"Question: Which particular branch?

"Answer: Household Finance was up on Paul Street, 4600 block of Paul and Greater Finance was, I believe on the 6300 block of Frankford Avenue.

"Question: Did you ever borrow any money from Harry Brown?

"Answer: Yes, one time.

"Question: How much did you borrow?

"Answer: Five hundred dollars and I paid him back in dribs and drabs. I needed money. I'll tell you what it was for. I was behind in my rent, two months behind in my rent and I had a lot of payments, a lot of other [63] payments. This is when the finance companies were after me and I asked him. I was desparate. They were ready to put my family out. I was two months behind on my rent. And, I went around to a lot of people and they didn't have the money. Then, I called him up on the phone. I said 'Can you do me a favor? Can you lend me 500. I need it for rent.' He said 'Sure. Come up and get it.' There was no problem. And, there was no interest charged. In fact, I think I still owe him $40.00 on it. I think I only paid him back $460.00. I may owe him $40.00. I'm not sure, but that was it.

"Question: Now, you never let $10,000 to—

"Answer: I never had 10,000. I got my own problems, Mr. Friedman, believe me. Call I.V.B.—no, you have I.V.B. records. I understand you have the records. You can see that I'm behind three months with them right now too, okay.

"Question: Did you ever tell anyone that you lent $10,000 to Harry Brown?

"Answer: No way, no way. I have no recollection, really.

[64] "Question: You n ver told—you deny it?

"Answer: I don't like to shoot the bull. I like to tell the truth, okay. I don't remember. If I did, I don't remember saying it, really.

"Question: You have no recollection of it?

"Answer: No, none whatsoever and I'm not trying to lie to you, believe me.

"Question: To the best of your recollection, your testimony here today is that you never told anyone that you lent $10,000 to Harry Brown?

"Answer: I never had 10,000 to lend anybody.

"Question: Okay. So, the answer to that is the best of your recollection?

"Answer: Right. To the best of my recollection, no, I didn't say it.

"Question: Now, did you ever tell anyone that the reason why you went down to Florida to see Harry Brown was to get, to try to collect some of the money that Harry Brown owed you?

[65] "Answer: No way.

"Question: No?

"Answer: No. I go to Florida every year and I'll tell you when I go. I go the first two weeks in December because usually that's the best time to go before the price changes. You can get a motel room for like $10.00 a night. After the 15th of the month, it goes up to $50.00 a night. And, I usually go—I either go to Florida or I go to Puerto Rico and you can check any records you want to. That's for the last 13 years, that's what Ive been doing. I never take a summer vacation.

"Question: Did you ever tell anyone that you were trying to contact Harry Brown to get money back from him?

"Answer: To the best of my recollection no.

"Question: Now, you never lent Harry Brown any money; is that right?

"Answer: That's right.

"Question: And, do you have any recollection at all of

ever hearing that Emmett Fitzpatrick had lent any money to Harry Brown?

"Answer: No way at all, sir. I don't [66] know what he does with his own money.

"Question: Now, did you meet with them again another time?

"Answer: On other occasion.

"Question: And when was that?

"Answer: Well, Mr. Brown got into a motorcycle accident and it was a freak accident and he was being towed by somebody else at about forty-five miles an hour and he hold him to slow down and instead of slowing down, the man stopped and he hit and he broke his leg and they had to put a pin in.

If you know Mr. Brown, I think you've seen him before. If you don't know him, he weighs about three hundred and fifty pounds. To see a man like that with his leg up in the air, I really felt sorry for him. I used to bring him fruit to the house and I brought him steaks one time.

"Question: Was Mr. Greenblatt ever there?

"Answer: No.

"Question: Was Mr. Fitzpatrick there?

"Answer: No, sir.

"Question: Did you ever see Mr. Brown or [67] Mr. Greenblatt with Mr. Fitzpatrick again after that robbery?

"Answer: Not to my recollection, no.

"Question: Now, sir did you go down to Florida in December of 1975?

"Answer: I think I went twice.

"Question: When were the two occasions?

"Answer: The first time—I'm not sure. The first time, I am sure because I went to Florida for about three or four days and then I went to Puerto Rico which I like to go also, which is also very reasonable at that time of the year. So, I made a package deal. I went to a travel agency and made a package deal from Fort Lauderdale, I was supposed to look at some boats for a friend of mine.

"Question: Who was the friend?

"Answer: My doctor.

"Question: Who is that, Dr. Slawek?

"Answer: Dr. Slawek, yes. Okay. I was supposed to look at a boat for him down at Fort Lauderdale at Pier 66 where they have a lot of boats and from there, I took off and went to Puerto Rico for about ten days and then, I came home and I'm not sure whether I went in [68] late December or early January. The second time I went, it was just for—oh, I borrowed some money off the bank.

"Question: Which bank's that?

"Answer: I.V.B. That's one of the problems.

"Question: Do you have any other accounts in any banks?

"Answer: No, sir.

"Question: Do you have any loans from any bank other than—

"Answer: No, sir. I cleaned them up with the loan from I.V.B. I had bad credit. I don't know, a lot of people have bad credit. I had bad credit. They consider me a number nine, which was the worst and I wanted to clean it up and I explained that to Mr. Orem. So, he said he couldn't give it to me either. I said 'Can you grant me a commercial loan till I clean it up,' and he did. And then, I cleaned it up and I converted that loan to a—

"Question: Where did you have loans?

"Answer: I told you.

"Question: Before you cleaned them up, just those two, Household Finance and where [69] else?

"Answer: And Greater Finance.

"Question: Those were the only two?

"Answer: Well, they were the two big ones.

"Question: Where else did you have loans?

"Answer: Oh, a bank down here. It wasn't that big of a loan. I still owe them $73.00 from about three years. They kept the Better Business Bureau, not the Better Business Bureau; the Credit Bureau, what do you call it? They gave me a number nine. Then, when I went to repay them the $73.00 they said 'We wiped it out a long time ago.'

I said 'Yeah, you wiped it out of here, but you never wiped it out with the Credit Bureau.' So they did.

"Question: Has Emmett Fitzpatrick ever co-signed a loan for you?

"Answer: No.

"Question: Has Emmett Fitzpatrick ever co-signed any loans that you were involved in?

"Answer: No, sir.

"Question: Now—

[70] "Answer: They were all on my own, myself and my wife.

"Question: Have you lent anyone any money in the last three years, have you lent anyone any money?

"Answer: When you say 'in the last three years', what kind of money and to who, Mr. Friedman? Be more specific. Yes, to my office, to my secretaries when then needed money, I lent them money. To Mr. Fitzpatrick, the day before payday, either he would lend me $5.00 or I would lend him $5.00. If that's what you mean, yes.

"Question: In the last three years, have you lent anyone over $3,000?

"Answer: No, sir. I didn't have over $3,000 to lend.

"Question: In the last—all right, have you ever told anyone that in the last three years you've lent anyone over $3,000?

"Answer: No, sir. I don't remember.

"Question: You don't remember telling anyone that?

"Answer: No.

"Question: You're pretty certain of [71] that; right?

"Answer: I'm almost positive. I don't have the money to lend. I got enough problems of my own.

"Question: Now, sir you said you were down to Florida on two occasions, once in December of '75?

"Answer: Uh-huh.

"Question: When was the next occasion?

"Answer: I think either the end of December or the beginning of January. Now since then, I've been down there three more times. I have a friend that has a fishing boat that takes me fishing.

"Question: All right. Now, were you also there in March, 1976?

"Answer: I think it was March of '76, I believe so.

"Question: Now, who did you go with when you went down there in December of 1975?

"Answer: The first time I went by myself.

"Question: In December of '75?

"Answer: That's right.

"Question: And in March of '76, who did [72] you go with?

"Answer: I went with a couple of people that own a vending business.

"Question: Who are they?

"Answer: Oh, one guy, he doesn't own it. He works for Stan Harris; Harvey Fisher and Ike—what's Ike's last name. He owns Have-A-Vend. They're friends of mine.

"Question: And who paid for your way in December of 1975?

"Answer: I paid for my way. I borrowed from the bank. I paid for my way all the way.

"Question: Who paid for your way in March, 1976?

"Answer: I paid for my way.

"Question: Now, in December of '75, did you contact Harry Brown?

"Answer: I think—the first time I was down there, I didn't stop to see him. The second time, I stopped to see him.

"Question: Is that March of '76?

"Answer: No, no, no. March of '76, I didn't stop to see him. The second date—now, you have to bear with me. The second date was either the end of December or the beginning of [73] January. In March, '76, I went fishing. I never saw Mr. Brown then. Then, the April and May, I went—March, April and May, I went on weekends.

"Question: How'd you go, by plane?

"Answer: By plane, night flight which is cheaper to go than day flight. If you go after ten o'clock, it's $77.00 to go. That's the way I went. I stayed in the room with somebody who paid for it. I paid part of the room. We

went in a group. We went like in a group, eight or nine people. We went on fishing trips for weekends. I went on Thursday night. I left on Thursday night and was back on Monday night. I took vacation days or comp days which were coming to me and I didn't go at the City's expense, so in case anybody has that idea. I paid my own way for every trip that I ever took. Nobody ever paid my way for me and each time I borrowed money from the bank to go. That's where I paid for it. If you don't believe me, you got my bank records. They'll show you.

"Question: All right. Now, when you stayed at the Pier 66, that is when you went down to look at the boats; right?

[74] "Answer: Yes, sir.

"Question: On that occasion, when was that, December, '75?

"Answer: That was December 5th. I remember that date, because I was trying to beat the price change. I wanted to go to Florida and to Puerto Rico. In fact, Dr. Slawek was supposed to come down to meet me but he couldn't get away. So, I stayed down there for three or four days for nothing and I just saw a lot of boats but I had no right to buy a boat for him. He had to buy his own boat. I was looking to, for something—he said—he sent me down first. He said 'You go down first; look around. If you see something, let me know.' I said 'I saw a few boats.' He was supposed to come down but he never did. So, I had a package deal already made by a travel agency to take me from Florida to Puerto Rico and back here to Philadelphia by myself.

"Question: All right. Well, in December of 1975, which was this time you went down to Fort Lauderdale, you went and stayed at Pier 66.

"Answer: That's right.

[75] "Question: Was the purpose of your going down there to try and make contact with Harry Brown?

"Answer: No, sir.

"Question: Was that one of the purposes for going down there?

"Answer: No, the purpose was to go down and look at boats.

"Question: Did you ever tell anyone that one of your purposes for going down there was to make contact with Harry Brown?

"Answer: I don't know where you're getting the information. I don't remember telling anybody that.

"Question: So, to the best of your recollection, you never did tell anyone that; is that correct?

"Answer: That's right.

"Question: Now, were you social friends with Harry Brown and—

"Answer: What do you mean by 'social friends'?

"Question: Well, did you go to parties with them?

"Answer: Some parties.

[76] "Question: In December of 1975, did you borrow $5,000 from I.V.B.?

"Answer: December of '75?

Question: Uh-huh?

"Answer: No, sir. I borrowed 5,000 before December of '75. Take a look at my records there. What they may have done is converted the commercial note over and over again. See, a commercial note only runs for thirty or sixty days and then they re-do it again.

"Question: Did you file a loan application in December of 1975 for a $5,000 loan?

"Answer: December, '75?

"Question: Yes?

"Answer: I would have to see the papers.

"MR. FRIEDMAN: I ask that this be marked Grand Jury Exhibit Number 1.

"(Whereupon a copy of a loan application dated 12/3/75 was marked as Grand Jury Exhibit Number 1 for identification.)

"BY MR. FRIEDMAN:

"Question: Let the record reflect that [77] I've marked a copy of a loan application dated 12/3/75 as Grand Jury Exhibit Number 1 for today and I'm handing it to Mr. Apfelbaum.

"Answer: This is before I went to Puerto Rico, sure. But, wait a minute. This is the first loan. I'm trying to figure, is this the—yeah, this is the six month commercial loan. But, will you please check the records? I think this could be the first one. I'm not sure. This is before I went to Puerto Rico.

"Question: Well, you got that money; is that right?

"Answer: I don't know whether I got this money or this was a conversion of my—no, this is the six month—yeah, I got the money.

Question: And what did you do with it?

"Answer: Paid off my loans.

"Question: And you paid off loans where?

"Answer: I told you where, at Greater Finance and Household Finance.

"Question: Did you have any money left after you paid off those loans?

"Answer: Yeah and I bought some clothes and went away on vacation.

[78] "Question: Where did you buy the clothes?

"Answer: Wanamaker's.

"Question: How much clothes did you buy?

"Answer: Not much.

"Question: And that was all you had left? How much did you have left after you paid off your loans?

"Answer: Do you have a copy of my checking account there?

"Question: I'm asking you how much you had left.

"Answer: Well, if you look at my checking account, you will see that almost the whole 5,000 went out to everything.

"Question: You're saying the 5,000 was put into your checking account?

"Answer: That's right. I did not get the 5,000 cash. The way they do it, they take your checking account and deposit the money into it. They give you a credit or a debit. What is it, a debit or a credit? I forget. My accounting is lost for years now. They give you a credit. They give you the $5,000 credit [79] and you can write checks on it. That's how they give you that loan and

they charge you a monthly interest on it and then after the monthly interest, after the six months, I had that loan converted to a regular loan.

"Question: Were you close friends with Harry Brown?

"Answer: No.

"Question: Did you ever tell anyone that you were close friends with Harry Brown?

"Answer: No.

"Question: Did you ever discuss with Emmett Fitzpatrick his lending any money to Harry Brown?

"Answer: No, sir:

"Question: Did Emmett Fitzpatrick ever tell you that he had lent money to Harry Brown?

"Answer: No, sir.

"Question: Did Harry Brown ever tell you that Emmett Fitzpatrick had lent him any money?

"Answer: No, sir.

"Question: Did Harry Brown ever tell you that Emmett Fitzpatrick had arranged for Harry Brown to be lent any money?

[80] "Answer: No.

"Question: Did you make any arrangements to have Harry Brown lent any money?

"Answer: Me make arrangements for Harry Brown?

"Question: Yes.

"Answer: No, sir. He made arrangements for me.

"Question: For you to get five hundred dollars?

"Answer: Yes. That and he introduced me to Mr. Orem at the bank to get my first loan off him.

"Question: When he introduced you to Mr. Orem, what did he say?

"Answer: He told Mr. Orem who I was and if he can help me out in any way. I told Mr. Orem my problem, that I had the finance companies dunning me and I couldn't make the payments and I was having a tough time.

"Question: Did you ever make any payments on a loan for Harry Brown?

"Answer: No.

"Question: Did you ever carry any money for Harry Brown in order to make any payments [81] on a loan?
"Answer: No.
"Question: Did you ever carry any money to Harry Brown?
"Answer: Carry any money to Harry Brown? No.
"Question: Did you ever carry any checks to Harry Brown?
"Answer: No, sir.
"Question: Did you ever tell anyone that you had lent Harry Brown money?
"Answer: No. You asked me that question before and I told you no.
"Question: Now, to your knowledge, Emmett Fitzpatrick did not lend any money to Harry Brown?
"Answer: To my knowledge, he did not. I don't know. Okay.
"Question: Okay.
"Answer: I can't say that he did not. I don't know.
"Question: You never had any discussions with anyone concerning the fact that Emmett Fitzpatrick lent money to Harry Brown?
"Answer: No. That's correct.
[82] "Question: All right. So, you were not a close friend and associate of Harry Brown?
"Answer: No, sir.
"Question: Is that right?
"Answer: That's exactly what I tried to tell you.
"Question: And, you have not told anyone that you were or are a close friend and associate of Harry Brown?
"Answer: No, sir.
"Question: Is that right?
"Answer: That's right.
"Question: Now, let's go back to your trip to Florida. You go down to fish on the weekends; is that correct?
"Answer: That's right, sir.
"Question: And, once a year, you usually go down for two weeks—
"Answer: For two weeks usually—

"Question: —broken up between Florida and Puerto Rico.
"Answer: And Puerto Rico. It all depends on how much money I have in December, or if I can borrow money from a bank, like I did.
[83] "Question: It's my understanding you went down to Florida in December of 1975, approximately the 5th of December.
"Answer: That's right. That's what I said before.
"Question: Now, at that time did you see Mr. Brown?
"Answer: No. I told you I went down there for a fishing trip, not fishing trip, to look at a boat for Dr. Slawek and then go to Puerto Rico.
"Question: And you only stayed in Florida about three days?
"Answer: About three or four days, something like that. I'm not sure exactly. Don't hold me to three or four. It was around that. I spent a total time of about two weeks between the two, including flight time and so on.
"Question: When you were down there, did you call up Harry Brown to talk to him?
"Answer: No.
"Question: Did you know he was down there?
"Answer: I heard he was down there. [84] Somebody had said he was down there.
"Question: Did you do anything to attempt to contact Mr. Brown when you were down there?
"Answer: Not that I remember. I don't think I knew where he was at.
"Question: Well, how did you find out where he was at eventually?
"Answer: Somebody had told me about it and I don't know who, but they told me he was down in Florida.
"Question: Okay. By this time, had the papers reported that Harry Brown was missing?
"Answer: I don't believe so. I don't know. I'm not sure. I'm trying to recollect. I don't know whether they said he was missing or not.
"Question: So, in December, when you were down

there, you're sure you didn't try to contact Harry Brown; is that correct?

"Answer: Yeah, yeah.

"Question: Did you try to locate Harry Brown when you were down there?

"Answer: No.

"Question: You're sure?

"Answer: Positive.

[85] "Question: Now, did you tell anyone that you were trying to locate Harry Brown in Florida?

"Answer: Not that I remember.

"Question: And, you know, you were on your vacation and you were looking at the boats, so, you weren't running around trying to find somebody you didn't know where they were; is that correct?

"Answer: Yeah.

"Question: And you would remember that?

"Answer: Yeah, I think I would.

"Question: Okay. Now, the second time you went down to Florida was when, the next time you went down after December?

"Answer: I don't know. It's still very vague in my mind.

"Question: Did you go down in March of '76 for a weekend?

"Answer: I could have, yes.

"Question: Was it around this time that you contacted Harry Brown?

"Answer: If I only knew the date of his anniversary, I know I was there the day before his anniversary.

[86] "Question: What anniversary, his wedding anniversary?

"Answer: His wedding anniversary.

"Question: Did you know it at the time?

"Answer: No, he told me about it.

"Question: So, you're down in Florida for the weekend—

"Answer: Yeah.

"Question: —for your dying passion, fishing; is that correct?

"Answer: No, it wasn't for fishing that time. It was

for rest. I didn't go fishing that weekend. I played tennis that weekend.

"Question: You played tennis?

"Answer: Yeah and then went swimming.

"Question: Where did you stay?

"Answer: Some motel on Motel Row.

"Question: Where?

"Answer: Miami Beach.

"Question: Miami Beach?

"Answer: That's right.

"Question: Okay. So, you went down to Miami Beach. When did you leave, Friday night?

"Answer: I don't know exactly what night I left. I could have left either Thursday night [87] and arrived Friday morning. I took a night flight, like I always do. It's cheaper that way.

"Question: How come you went down to Miami to rest for the weekend?

"Answer: How come?

"Question: Yeah?

"Answer: Because it's cheap that time, that's why. Okay.

"Question: That seems like it's pretty far to go to rest for the weekend.

"Answer: It's nice and warm down there in March. It's cold up here. I've been doing that for thirteen years, Mr. Madden. This isn't the first year.

"Question: So, when you were down there to rest, you happened to see Harry Brown. Did you run into him?

"Answer: No. Somebody told me where he was at.

"Question: Who told you?

"Answer: I'm trying to figure out who told me. I don't know who.

"Question: Now, so you just happened—you were down there for the weekend and what [88] did you do? Did you call him up?

"Answer: Yeah, I called him up. I called where he was working and that's where I called him and I said 'I come 1,400 miles and, you know, I want to see you. I haven't seen you for a while.'

"Question: Did you go to Fort Lauderdale?
"Answer: No, he wasn't in Fort Lauderdale.
"Question: North Miami?
"Answer: No, he was in a place called Family Auto Sales.
"Question: Where is that located?
"Answer: It's in Miami. It wasn't too far from where I was at. I went over the Causeway and over 27th Street. It's a place called not Boca Raton, but something that sounds like that. It's a big used car dealer lot and he was very happy to see me. That's where he embraced me and we talked a lot and he invited me over the house the next day. In fact, the next day, I only wanted to go over there for about five or ten minutes and I said 'Look, I want to see Jane and the kids. We [89] haven't seen them for a long time.' And, I went over in my bathing suit and I stayed the whole day until nine o'clock at night. They wouldn't let me go.
"Question: You were down there for the weekend; is that correct?
"Answer: That's right.
"Question: And, you said it was just a little ways to Mr. Brown's place of employment?
"Answer: That's right, sir.
"Question: Now, how far was it from Mr. Brown's house?
"Answer: Quite a distance.
"Question: Well, you're down there for the weekend to relax because it's warm and you go up and you spend a whole day in Mr. Brown's airconditioned house.
"Answer: He invited us over. Okay.
"Question: When you were down there in March, was that the first time you had seen Mr. Brown or attempted to see Mr. Brown?
"Answer: Yes, sir.
"Question: Attempted to see Mr. Brown?
"Answer: Yes, sir; to the best of my recollection, yes, sir.
[90] "Question: Now, at that time, did you discuss Chestnut Hill at all?
"Answer: No, sir.

"Question: Now, did you ever tell—I believe this was gone into very thoroughly but I just want to clarify in my own mind. Did you ever tell anyone that you lent Harry Brown $10,000?
"Answer: I told you no, sir.
"Question: Did you ever tell anyone that you arranged for a loan of $10,000?
"Answer: No, sir. I couldn't arrange for a loan.
"Question: Did you ever tell anyone that you cosigned for a loan for Harry Brown?
"Answer: I couldn't co-sign because I am judgment-proof. You as a lawyer know it.
"Question: Did you ever tell anyone that?
"Answer: No. How could I tell it if I didn't do it.
"Question: Did you ever tell anyone—
"Answer: As far as I know, I didn't tell. Okay. I answered that four times already.
"Question: Well, each one's a little different question.
[91] "Answer: No. Each time, you get me more excited is what you're trying to do, sir. And, it's not fair. I'm trying to be honest with you and you're not letting me.
"Question: I'm trying.
"Answer: No, you're not, Mr. Madden.
"Question: Well, the record speaks for itself.
"Answer: I know the record speaks for itself."
MR. MADDEN: May I approach the witness, please?
THE COURT: You may.
MR. SLOMSKY: May we take a break?
THE COURT: Take about a ten minute recess, members of the jury.

(At this time a recess is taken.)

(At this time the Court and jury enter the courtroom.)

(At this time Katherine Black resumes the stand.)

MR. MADDEN: At this time I would request the Court's permission to collect copies of Government Exhibit G-1.
THE COURT: All right. G-1 should be [92] returned at this time.

MR. MADDEN: If I may be permitted to approach the witness?

THE COURT: Yes.

BY MR. MADDEN:

Q. Miss Black, I am showing you what has been marked for identification as Government Exhibit G-2. Will you look at that document, please?

A. Yes.

Q. Can you identify that, please?

A. Yes. This was testimony of Mr. Apfelbaum taken at the Grand Jury.

Q. Is that the January 3rd testimony?

A. The caption page and certificate page is not here, so I am unable to tell what day it was.

Q. May I be permitted to show the witness the complete transcript?

Will you stipulate it's January 3rd?

MR. SLOMSKY: Stipulate to exactly what?

MR. MADDEN: The date.

MR. SLOMSKY: I would so stipulate.

THE COURT: It's stipulated G-2 is the transcript of the hearing on January 3rd.

MR. MADDEN: Your Honor, we offer Government Exhibit G-2 in evidence at this time.

[93] THE COURT: G-2 will be received into evidence subject to the ruling that I made in the absence of the jury.

(At this time Exhibit G-2 is received into evidence.)

MR. MADDEN: I would also request the Court's permission to pass out copies of Government Exhibit G-2 to the jurors.

THE COURT: Copies may be handed to the jurors.

MR. MADDEN: I have also handed a copy of Government Exhibit G-2 to Mr. Finkelstein and request the Court's permission to allow Mr. Finkelstein and Mrs. Black to read Government Exhibit G-2.

THE COURT: This will be read and the jury will understand, I am sure, as they did in the prior one, that the questions were questions that were asked during the

Grand Jury proceeding by one of the U.S. Attorneys or assistants and the answers given, as are being read by the witness on the witness stand, are the answers that Mr. Apfelbaum gave at that hearing. All right.

(The following questions are read by [94] Howard Findelstein and the answers are read by the witness Katherine Black.)

"Question: All right. How, did you go to other—did you go to other parties and social events with Harry Brown other than his birthday party?

"Answer: No, sir.

"Question: You're sure you didn't?

"Answer: To the best of my recollection, I didn't.

"Question: Well, do you have any remembrance at all of that?

"Answer: No.

"Question: Did you ever tell anyone that you had gone to numerous social events—

"Answer: No, sir.

"Question: And, to numerous parties—

"Answer: No, sir.

"Question: —with Mr. Brown?

"Answer: No, sir.

"Question: You never did?

"Answer: No, sir.

"Question: Sir, do you remember being questioned by the Federal Bureau of Investigation on March 16, 1976; is that correct?

[95] "Answer: They came to my office, yes.

"Question: Sir, didn't you at that time, tell them that you had been in attendance at numerous parties and general social events together with Harry Brown?

"Answer: No, sir, I don't remember saying that.

"Question: You didn't tell them that, sir?

"Answer: No, sir.

"Question: If you told them that, would that be a lie, sir?

"Answer: Huh? If I what?

"Question: If you told them that, would that be inaccurate?

"Answer: If I told them that?

"Question: Yes.
"Answer: I don't even remember saying that.
"Question: So, to the best of your recollection, you did not tell them that; is that right?
"Answer: Right.
"Question: So, to the best of your recollection, you did not tell them that; is [96] that right?
"Answer: Right.
"Question: Now sir, so the only times really, okay, that you in any way socialized with Harry Brown that you can recall was when you went to his birthday party?
"Answer: It's not really socializing. I was invited to a party like you would be invited to a party. There were other people there and that's all it is. It's not socializing. I don't know what you mean by socializing, Mr. Friedman.
"Question: Sir, were you a close friend of Harry Brown?
"Answer: No, sir. I told you that over and over again.
"Question: Sir, you did tell me that over and over again.
"Answer: That's right, sir.
"Question: Now sir, didn't you in the past tell the F.B.I. that you were a close friend of Harry Brown?
"Answer: If I did, I don't remember.
"Question: Sir, I'm asking you whether you have any memory of telling the F.B.I. that [97] you were a close friend of Harry Brown?
"Answer: No, sir. I don't remember.
"Question: All right. Did you tell them, sir?
"Answer: I don't remember, I said, Mr. Friedman.
"Question: Mr. Apfelbaum, do you have any memory of telling the F.B.I. that you were a close friend of Harry Brown?
"Answer: For the sixth time, I don't remember. Is that explicit enough? I don't remember.
"Question: You don't remember whether or not you said it?
"Answer: No. That's right. I don't remember.

"Question: You don't remember whether you said it?
"Answer: No.
"Question: Will you search your memory, sir, and try to recall when you spoke to the F.B.I.; do you recall that?
"Answer: They came into my office. I don't even remember what I said to them.
"Question: All right. Do you remember [98] about when that you—about when you spoke to them?
"Answer: If you say March, it's March. I don't remember.
"Question: How many people were there, sir?
"Answer: I don't remember.
"Question: How many agents?
"Answer: I think there were two.
"Question: Now sir, there were two agents and were there any other people there?
"Answer: No, sir.
"Question: Now, you had a conversation with them; is that right?
"Answer: I talked to them, yeah.
"Question: You didn't ordinarily—you weren't ordinarily or routinely interviewed by the F.B.I.; is that right?
"Answer: Not that I remember, no.
"Question: Was that an important event that happened?
"Answer: No.
"Question: So, it didn't make any difference?
"Answer: What do you mean 'it didn't [99] make any difference'? I don't understand what you're trying to say.
"Question: Was it an important event that it happened?
"Answer: What, that I talked to an F.B.I. agent? I talked to F.B.I. agents before when I worked in the Courts. They came to me for information. I always gave them information. It's nothing unusual.
"Question: Now sir,—
"Answer: Are they supposed to be somebody other than normal people or what? Are they superior?
"MR. FRIEDMAN: I would ask that this be marked as Grand Jury Exhibit Number 1 for today.

"(Whereupon a hotel record dated December, 1975 from Pier 66 in Xerox form was marked as Grand Jury Exhibit Number 1 for identification.)

"BY MR. FRIEDMAN:

"Question: Mr. Apfelbaum, we have marked as Grand Jury Exhibit Number 1 a Xerox copy of a hotel record from Pier 66; and I would ask you whether your signature appears thereon?

"Answer: Yes. It's mine. I told you I [100] was there.

"Question: Now sir, that's in December. The date is December, 1975; is that correct?

"Answer: Five, that's correct.

"Question: You were down there at that time?

"Answer: Yes, sir.

"Question: Is that right?

"Answer: Yes, sir.

"Question: And, you were down there for the purpose of obtaining a boat for Dr. Slawek; is that correct?

"Answer: I was there on vacation and I was supposed to meet Dr. Slawek down there. We were supposed to look at boats.

"Question: And, did you see him at that time?

"Answer: No, he got busy and he couldn't come down. I called him a couple times. If you have the phone records, you could see that I called his office.

"Question: Did you look for boats then?

"Answer: Yeah, I was looking for boats and I called him a couple times and I told him I would pick him up at the airport. He could [101] stay in my room because my room was paid for. I had a big double room, but he never did come down.

"Question: Did you look for—did you see Mr. Brown at that time?

"Answer: No, sir.

"Question: Did you look for him?

"Answer: No, sir.

"Question: Did you place any calls to look for him?

"Answer: No, sir.

"Question: Why did you stay at Pier 66?

"Answer: Because that's where the booking agent put me into. I didn't want to go there but that's where they put me in. It was closer to where all the boats were. I wanted to get into a place called Stouffer's Inn.

"Question: And, the room number listed on here was room number 463.

"Answer: I don't remember room numbers. If that's what it is, that's what it is.

"Question: Now,—

"Answer: I believe it was $24.00 plus tax I paid for it, each night.

"Question: Now sir, you went down there [102] later and you did contact Mr. Brown; is that right?

"Answer: Yes, sir.

"Question: Where did you stay on that occasion?

"Answer: I stayed in a motel somewhere on Motel Row in Miami.

"Question: Where?

"Answer: Miami Beach.

"Question: What was the name of that?

"Answer: You got me. I usually go down there, if I go into Miami, I go without a room. I usually don't like to get a room but on this one, I booked through a travel agent and that's why they put me in Pier 66, but usually I go down and I look around different motels. I look for the best price and a motel's only just to sleep in, that's all.

"Question: Sir, what motel did you stay in?

"Answer: I don't remember.

"Question: You don't remember?

"Answer: If you can give me a name, I may recollect it.

"Question: You don't have any memory?

[103] "Answer: No, sir.

"Question: Did you pay by check or by cash?

"Answer: I paid cash.

"Question: And, you don't have any memory of where you stayed?

"Answer: I know it was around a hundred and—anywhere between 187th and 192nd Street. Now, which

motel it is, I don't know. There's about twelve of them in between there.

"Question: Can you describe—did it have a swimming pool?

"Answer: Yes, it had two swimming pools. It had a sea water and a regular water. One was warm because that's where I went swimming.

"Question: And,—

"Answer: I remember because the sea water was cold. They can't heat that. The fresh water pool is heated. That's all I can remember of that place. And, I played tennis too while I was down there. They had a free—not free, I think I paid $1.00 an hour. They had a tennis court there and I played with a couple people from New York whose names I do not recollect.

[104] "Question: Was there any particular restaurant or sign that you can recall that was across the street from this particular motel that you stayed in?

"Answer: No, sir.

"Question: No?

"Answer: No. There's so many—there's all stores across the street from it. If you know Miami Beach, the beach part is where all the motels are. The opposite side of Collins Avenue is all stores, like the boardwalk in Atlantic City, if you know what I'm talking about. It's like a honky-tonk.

"Question: All right. And, you did not charge anything at that time; is that right?

"Answer: To the best of my recollection, no. I think I paid cash for everything.

"Question: All right. Now, in connection with that, on that occasion, you did see Mr. Brown; is that right?

"Answer: Yes, I did.

"Question: Where did you see him?

"Answer: At the automobile dealership that he was working at.

"Question: What was the name of it?

[105] "Answer: Some kind of Auto Sales. It's a used car lot. I forget the name of it.

"Question: Now sir, where did you find out his name —how did you find out where he was?

"Answer: I forget. Somebody had told me that they had seen him down there.

"Question: Who told you that?

"Answer: I don't remember. I don't remember.

"Question: Did you tell Mr. Fitzpatrick that you had seen him down there?

"Answer: I don't remember whether I told him or not. I could have. I don't know. I don't remember offhand.

"Question: Now sir, where did you get Mr. Brown's telephone number?

"Answer: I didn't get Mr. Brown's telephone number. Somebody told me the place that he was working and I called up. It was in the book. I don't remember. Some sort of Auto Sales. I don't remember the first name of it.

"Question: Who told you that?

"Answer: I don't remember, sir.

"Question: So, you didn't have any [106] special reason to go down there for any purpose to see Mr. Brown?

"Answer: No, sir.

"Question: And, you never told the F.B.I. or anyone that you went down there to see Mr. Brown for any reason?

"Answer: Not to the best of my recollection, no.

"Question: Because, to your recollection, sir, the only reason you went down there was on vacation and you went down there for no reason to see Harry Brown?

"Answer: No. I usually go down on weekends. I went on a weekend. I left on Thursday night and I think I came back on a Monday night.

"Question: You're telling the Grand Jury here that the reason you went down there was for vacation. You didn't go down there to see Harry Brown and you really never told the F.B.I. that you went down there to see Harry Brown; is that right?

"Answer: Well, you asked me three different things.

"Question: Well,—

[107] "Answer: Can we back off and start from the beginning? See,—

"Question: We'll take one at a time, sir.

"Answer: Yeah, one at a time.

"Question: Now sir, you went down there for personal reasons, for vacation?

"Answer: For vacation, that's right, sir.

"Question: Okay. You did not go down there to see Harry Brown; is that right?

"Answer: That's correct, sir.

"Question: And, you didn't tell the F.B.I. that you went down there to see Harry Brown; is that right?

"Answer: To the best of my recollection, I don't remember telling the F.B.I. anything. I don't know what—

"Question: About going to see Harry Brown?

"Answer: About anything. I don't remember what I told them.

"Question: If you did tell the F.B.I. that you went down there, one of the reasons you went down there was to see Harry Brown, would that have been accurate or not?

"Answer: I don't know. You say 'if'. [108] I don't remember saying anything to them.

"Question: Sir, if you did tell them that, would that have been accurate?

"Answer: What do you mean, if I told them that, would that be accurate?

"Question: Yes, sir.

"Answer: I don't remember saying anything to them.

"Question: Sir, if you told them that, would that be accurate?

"Answer: There is no ifs, ands or buts. If I told them, I don't remember. I just don't remember.

"Question: Well, I'm saying, assuming that you did tell them that, would that be true?

"Answer: I'm not assuming anything, sir.

"Question: Well, I am assuming and—

"Answer: Well, you may be assuming, but I'm not. I don't give sworn testimony on assumptions. I don't think you would either and if you had a client, you wouldn't either.

"Question: Now sir, you went down there and you saw Mr. Harry Brown and where was he when you saw Mr. Harry Brown and where was he when you got there? [109] "Answer: At an automobile dealership. He asked me—he invited me over for lunch.

"Question: Was he sick that that time?

"Answer: Not that I know of. I know he was limping from the accident that he had.

"Question: Did you see him at another occasion right after the accident?

"Answer: I told you I did.

"Question: Where did you see him at that time?

"Answer: At his house. I was on my way up to the hospital to see him. I was told he was in the hospital and he wasn't there. He was home and I went home. I brought him a fruit basket.

"Question: What house—where was that house?

"Answer: Somewhere up near Willow Grove. I don't know the exact address.

"Question: Now, when you got down to Florida, he invited you—

"Answer: He invited me over for lunch.

"Question: For lunch?

"Answer: Right.

"Question: Where did you go with him [110] for lunch?

"Answer: Nowhere. We sat in his—the automobile place because he couldn't move around with his leg and he said he was busy.

"Question: And, what did you have?

"Answer: Coffee.

"Question: That was it?

"Answer: That was it. That was the lunch.

"Question: What did you talk to him about?

"Answer: Just old times, about his foot mostly, how he was getting along and how his wife and the children are. Then he invited me over to his house the next day for a little gettogether because it was his anniversary the next day. He told me his daughter was baking a cake, which she did. And, I brought food over to the house.

"Question: And, who else was there?

"Answer: His wife, two children and a friend of mine.

"Question: And, you stayed for how long?

"Answer: We stayed all day. We were [111] in our bathing suits. We had planned to only stay a couple hours and they didn't want us to leave and I went fishing with the kids in a canal in back of the house. I remember that because the kids liked me a lot.

"Question: Did you discuss any loans with Harry Brown?

"Answer: No, sir.

"Question: Did you ever tell the F.B.I.—you denied last week that you told anyone that you had lent money to Harry Brown?

"Answer: That's right.

"Question: You denied that?

"Answer: How could I lend money when I don't have any money myself, Mr. Friedman?

"Question: So, you didn't tell the F.B.I. or anyone that you had lent money to Harry Brown?

"Answer: No, sir.

"Question: Is that right?

"Answer: That's right.

"Question: Did you tell anyone that he patted you down?

"Answer: No. That's ridiculous. I don't know where you're getting all these [112] statements at. He hugged me but that's about it. He didn't pat me down. He hadn't seen me for quite a while.

"Question: He didn't pat you down to see that you weren't carrying a weapon?

"Answer: That's ridiculous. I don't carry a weapon. Everybody knows I don't carry a weapon.

"Question: He didn't do that; right?

"Answer: No, he didn't do it.

"Question: And, you didn't tell the F.B.I. that he did that; right?

"Answer: Let me ask you something. Can I ask something? In other words,—

"Question: Sir, I would ask you to answer the question. Did you tell the F.B.I.?

"Answer: No, sir. I did not. Okay.

"Question: All right. Now, you personally never did any business with Chestnut Hill; is that right?

"Answer: That's correct, sir.

"Question: And, you personally have never had any financial—excuse me. Other than a $500 loan, you personally never had any financial transactions with Harry Brown; is [113] that right?

"Answer: None whatsoever. He did me a favor and I paid most of it back.

"Question: You never told anyone that you did have financial transactions with—

"Answer: No.

"Question: —with Harry Brown?

"Answer: No, sir.

"Question: Other than that $500 loan?

"Answer: I never told anybody about the $500 loan until I told you. I felt that was a personal thing and nobody should know about it. He did me a personal favor. Otherwise, I would have been thrown out of the house.

"Question: You also testified that you did not co-sign any loan for Harry Brown; is that right?

"Answer: That's correct, sir.

"Question: Because, if you're judgment-proof—

"Answer: Who's going to lend me anything? I owe nothing. No bank in the world is going to let me co-sign and you know that as well as I do.

[114] "Question: So,—

"Answer: I'm not a lawyer. You are.

"Question: So, obviously it would be a preposterous thing to say; right?

"Answer: Absolutely, sir.

"Question: So, you didn't tell the F.B.I. that you had co-signed a loan for Harry Brown?

"Answer: How could I when I couldn't?

"Question: So, you didn't; right?

"Answer: Yeah, right.

"Question: Now, you still have the—Mr. Orem, you were introduced to Mr. Orem by Harry Brown; is that right?

"Answer: That's correct, sir.

"Now, sir, in 19— what, 1975 and 1976, did you have $10,000?

"Answer: Did I what?

"Question: Have $10,000?

"Answer: I told you I didn't have $10,000.

"Question: And, you didn't lend $10,000 to Harry Brown; is that right?

"Answer: No, sir.

"Question: And, you testified that way [115] last week.

"Answer: Yeah.

"Question: You testified last week that you never told anyone that you had lent $10,000 to Harry Brown; is that right?

"Answer: That's right, sir.

"Question: Okay. And, you still persist in that testimony?

"Answer: Uh-huh. How can I lend it to him when I didn't have it? I had to go to the bank and borrow money myself.

"Question: You still persist in that testimony?

"Answer: Yes, sir.

"Question: You never told the F.B.I. that you lent Harry Brown $10,000; is that right?

"Answer: If I did, it was ridiculous.

"Question: Did you tell them that?

"Answer: I don't know. I don't think I did.

"Question: Do you have any recollection of telling them that?

"Answer: No, no, sir.

"BY MR. FRIEDMAN:

[116] "Question: Sir, when you spoke to the F.B.I. in March of 1976, that was right after you had come back from Florida and had spoken to Mr. Brown; is that right?

"Answer: If you say so. I don't remember. I don't remember when it was.

"Question: Wasn't it a few days after you had been to Florida?

"Answer: I don't remember. It could have been.

"Question: Now, how long did you talk to them?

"Answer: I would say no more than about five minutes.

"Question: . . . 1976, did you have—were you in 1976 interviewed by the F.B.I. on any other occasion?

"Answer: Not that I remember, no.

"Question: And, how about during the preceding year, 1975?

"Answer: No.

"Question: When you saw Mr. Harry Brown, you didn't go down there to do any investigation of him; is that right?

"Answer: I didn't go down to see [117] Mr. Harry Brown. I went down for vacation.

"Question: What document did you bring?

"Answer: The only reason I have this is because—I want to correct some statement from before. You said I took a $5,000 loan in December. It wasn't December. That was a renewal of the loan that I took in August. I just—the way I can tell you is the date on this check is August 18, 1975. It's to Household Finance Company for $1,604.45, which I paid off. It says 'Payment in Full on consumer's loan as per agreement with Mr. J. DeSantis, Manager.'

"Question: Could we have this (indicating)?

"Answer: Sure.

"Question: I don't want to mark it on the front.

"Answer: You can mark it. It says 'cancelled check.' It doesn't make any difference.

"MR. FRIEDMAN: We'll mark it on a piece of paper attached to it.

> "(Whereupon a check dated August 18th, 1975 in the amount of $1,604.45 payable to [118] Household Finance Company was marked as Grand Jury Exhibit Number 2 for identification.)

"BY MR. FRIEDMAN:

"Question: This check that you brought in which has been marked Grand Jury Exhibit Number 2 for today—

"Answer: Yeah, okay.

"Question: Do you want to refer to it then?

"Answer: Yeah, I believe I took a $5,000 loan in August of '75. With this, I paid off quite a bit of loans. I told you I had very bad credit. It wasn't bad. It was what they call slow. I was slow paying. I had problems and I took the loan to make like a consumer loan out of all of them. They couldn't give me a consumer loan because of my bad credit, so they granted me what they call a commercial loan for $5,000, which is you take the money and you pay the interest until you can pay the full note back.

"Now, I had told you—you had showed me a paper saying I took it out in December. It wasn't in December. December was a renewal of that note. In December, I got $2,500. [119] Remember I told you executive credit. Well, I think if you have the paper there now, you could see it says $5,000 and $2,500. I couldn't understand why there was $5,000 and $2,500 on there.

"I do recall now that I got executive credit of $2,500 right before I went to Pier 66 because I remember going to the travel service—travel agency and writing out a check for the airline ticket and I picked up my confirmation as to where I was going to stay. Everything else, I paid for. I paid for my airline ticket ahead of time, and I had gotten some traveler's checks that I needed.

"But, that $5,000 loan was not in December. It was in August of '75, because that's why I paid off all my loans, and I had told you that I owed Household Finance Company. It was an error. I would like to correct it now. It was Beneficial Finance Company. Greater Finance Company, I had paid off, I think the year before. I had so many different finance companies. I got them confused. But, it was Beneficial Finance Company. So, I would like to correct the record.

[120] "Question: We appreciate your correcting the record.

"Question: Okay. Now, I would like to go back to one of the questions that Mr. Friedman had asked and that was how you found out that Harry Brown was in Florida or where he was in Florida?

"Answer: I don't remember. I have a lot of friends

that are in Florida and I think one of them came up and told me he was down there.

"Question: What mutual friends do you have with Harry Brown?

"Answer: I don't know. There is no such thing as a mutual friend.

"Question: Well, who do you know that knows Harry?

"Answer: I don't know.

"Question: Well, tell me everyone you know that knows Harry?

"Answer: I don't know. I don't know to this day who told me.

"Question: Well, I'm not asking you who told you right now. I want to know who you have that is a mutual friend of Harry Brown.

[121] "Answer: I don't know offhand right now.

"Question: Did Mr. Fitzpatrick tell you?

"Answer: I don't think so. I don't think he knows either. It was somebody down in Florida told me, not up here.

"Question: Someone in Florida, where did they tell you?

"Answer: They told me he worked at some sort of a used car lot.

"Question: Where did you see him? Let's put it that way.

"Answer: On Collins Avenue, I imagine. I don't know who it was. I saw quite a few people down there. I don't know what their names are. You know, it was so long ago.

"Question: Okay. Let's go back again. The person that you saw who told you where Harry Brown was, where were they at that time? Did they tell you up here or did they tell you in Florida?

"Answer: I think it was down in Florida.

"Question: Okay. And, where did you meet them?

[122] "Answer: I imagine on Collins Avenue somewhere. I don't remember. I don't remember, really.

"Question: Can you tell me what person that you know that knows Harry?

"Answer: Marvin Greenblatt knows him.

"Question: Did you see Marvin Greenblatt in Florida?
"Answer: No.
"Question: Did Marvin Greenblatt tell you?
"Answer: No.
"Question: Who else knows him that knows you?
"Answer: I don't remember who told me. To this day, I don't remember. I truthfully don't remember.
"Question: Well, they just didn't say Harry's in Florida. They must have said Harry's in Florida. He's working at such and such a place and I think you said Family Auto Sales.
"Answer: Is it Family Auto Sales? I know it had something to do with auto sales.
"Question: Okay. So, somebody told you [123] exactly where he was working?
"Answer: Yeah, somebody told me that they saw him there.
"Question: Okay. And, you remembered where they told you they saw him.
"Answer: At this auto sales place, yeah.
"Question: But, you have no idea at all who it could have been?
"Answer: No, no, Mr. Madden, I don't.
"Question: No idea, no conception?
"Answer: No. I don't remember, really.
"Question: Okay.
"Answer: If I did, I would have told you.
"Question: Now again, who else do you know in common that knows Harry Brown?
"Answer: I don't know.
"Question: Well, what friend of yours knows Harry Brown, anybody?
"Answer: I don't know. I don't have that many friends that know Harry Brown. I'm just saying I probably bumped into somebody down there and they said, I think they must have told me a friend of yours is down here. He's working down here.
[124] "Question: And, you have no conception in your mind of who that was that told you?
"Answer: No, sir.

"Question: Was it a male? Was it a female?
"Answer: I couldn't tell you, really. I really couldn't.
"Question: Does Mr. Fitzpatrick know Harry Brown?
"Answer: Does he know him.
"Question: Yes.
"Answer: I believe Mr. Brown was his client.
"Question: Did Mr. Brown ever tell you that Mr. Fitzpatrick was a close friend of his?
"Answer: No. He said he was his lawyer.
"Question: He never said he was a good friend.
"Answer: Not that I know of. He never told me. To the best of my recollection, I don't remember him saying he was a good friend. I know he was a client of his. I know that from reading it in the papers.
"Question: So, you can't tell the Grand Jury how you found out that Harry Brown was in [125] Florida?
"Answer: I don't know. If I did, I would tell you, Mr. Madden.
"Question: And this was in March of 1976; is that correct?
"Answer: I think that was the date that Mr. Friedman gave.
"Question: Now, did you know that Harry Brown was supposedly in hiding at that time? Had there been newspaper reports that he was missing or that the F.B.I was looking for him?
"MR. FRIEDMAN: Excuse me. The response to the last question was he thinks that's the date Mr. Friedman gave.
"I assume that your response in the past has been that you don't recall the exact date?
"THE WITNESS: I don't. You know what I thought it was. I thought it was in December. If you say it's March, it's March. I really don't remember to this day.
"BY MR. FRIEDMAN:
"Question: So, you recall the interview took place sometime between December and early Spring of—December, 1975—
"Answer: You told me March of '76 and [126] I'll go along with that. I don't remember. I really don't remember.

"Question: To your recollection, do you recall the interview being between December of '75 and April of '76?

"Answer: Somewhere around there. I don't know. I don't remember. If you tell me a date, that's the date. I'll go along with whatever you say.

"Question: Well,—

"Answer: I mean, I don't remember. Okay. If that's what you want me to say, if it's between such and such a date, yes, I'll say it.

"Question: No, that isn't what I want you to say.

"Answer: Well, I don't remember. I just don't remember when it was.

"Question: You don't remember when it was?

"Answer: No, sir.

"Question: That's the only way you knew Harry Brown was bringing the car in; is that correct?

"Answer: That's what?

[127] "Question: That's the only way you knew Harry Brown?

"Answer: Yeah, yeah.

"Question: And, through this relationship, when you went down to Florida, you wanted to see Harry Brown?

"Answer: No, I didn't want to see him. I happened to be down there, I told you. See, you're trying to put words in my mouth, Mr. Madden, and I don't think it's fair.

"Question: Okay.

"Answer: I really don't think it's fair. I told you what I did and you don't believe me. Now, you're putting words in my mouth. I think it's unfair.

"Question: I didn't try to put words in your mouth, Mr. Apfelbaum.

"Answer: You're telling me I went down to Florida. Will you read it? Can she read it back the way you said it?

"Question: Please answer my question.

"Answer: If you tell it the right way, yes.

"Question: Well, if they're not right, then you say that's not correct.

[128] "Answer: I say it's not correct the way you're saying it.

"Question: You went down to Florida in March for a weekend; is that correct?

"Answer: That's correct, sir.

"Question: To play tennis; is that correct?

"Answer: No, sir, not to play tennis. I went down for a little rest. I found out that the place I was staying out had free tennis and I took advantage of it.

"Question: You went down there for the weekend in March for a rest?

"Answer: That's correct.

"Question: And, out of that weekend, you spent two hours one day and all day the next day with Harry Brown; is that correct?

"Answer: Not to my wanting to do it, believe me, I would rather have been on the beach.

"Question: When you went down there and you wanted to be on the beach—

"Answer: He asked us to stay and we stayed.

"Question: Wait a second. You're getting [129] ahead of me.

"When you were down there for a weekend, and you wanted to be on the beach, you found time to go and see Harry Brown at his place of business; is that correct?

"Answer: Just to say hello to him because I went 1,400 miles and I found out where he was at.

"Question: And, you thought you wanted to go see him down there and have lunch with him or whatever?

"Answer: Just to say hello to him, that's all.

"Question: But, he wasn't a good friend; right?

"Answer: No, he's not a good friend. Well, I don't know what you term a good friend, Mr. Madden.

"Question: Now,—

"Answer: I mean, you make—you make—your connotations of good friend, I don't understand it, really.

"Question: Well, you have told us that he wasn't a good friend or a close friend of yours.

[130] "Answer: He is not a close friend. He just happened to be somebody that I knew and I was down

1,400 miles away from home and I found out that he was down there and I went to see him. Is there anything wrong with that?"

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 77-317

THE UNITED STATES OF AMERICA

vs.

STANLEY APFELBAUM

POST-TRIAL MOTIONS

October 27, 1977

BEFORE: THE HONORABLE DONALD W. VAN ARTSDALEN

APPEARANCES:

ROBERT MADDEN, ESQ.,

—and—

RONALD COLE, ESQ.,
Assistant U. S. Attorneys

JOEL SLOMSKY, ESQ.,
Attorney for the Defendant

[11] PORTIONS OF DISTRICT COURT
PROCEEDINGS ON OCTOBER 27, 1977

* * * *

[MR. SLOMSKY]:

If I might go on to another point and that is with respect to the additional portions of Grand Jury testi-

mony which were [12] read to the jury over defense's objection.

I had no objection under U. S. versus Hockenberry, certainly to the jury being read those portions of the Grand Jury testimony which made up the corpus delecti, as I understand it, and those were the questions and answers in the indictment.

I had no objection to other questions and answers being read which specifically related to the questions and answers in the indictment. But I did object to other questions and answers which permitted Mr. Madden, on behalf of the Government, to tell the Grand Jury, to tell the jury in his opening and again argue in his closing and bring in Mr. Orem's testimony that it was a pattern of deceit or pattern of lying to the Grand Jury that was present in Mr. Apfelbaum's testimony.

If there were other instances of him lying to the Grand Jury, I would submit to the Court that the Government should have charged him in other counts, which they didn't do.

But the immunized testimony is protected testimony and it's. I believe, it [13] goes beyond United States versus Hockenberry in which the—in that case other portions of Grand Jury testimony were read to the jury by the prosecutor; I believe not only used to cross examine Hockenberry when he testified, but it seems to me that the law is that Grand Jury testimony, if it falls, is not protected.

But for Mr. Madden to argue that there is a pattern of deceit here, without establishing any falsity, or without charging the defendants with lying in other, shall we say material respects, it seems to me is a violation of the Hockenberry rule and violation of the Fifth Amendment.

THE COURT: Of course there were two specific counts that the jury found that the defendant did lie about. It seems to me if there are two counts, and read those portions, that deal directly with those questions, that the Government can argue that that shows a pattern

of deceit. I don't think there is any quantitative basis for saying that the Government could not argue that.

MR. SLOMSKY: Well, as I understand what the Government was arguing, it was not [14] that they were—because he lied in these two instances that was specified in the indictment. It was a pattern of deceit. But because he may have lied in other instances which go beyond the two counts containing the charges, there is a pattern of deceit.

I don't understand Mr. Madden, during the trial, just to be limiting it to those two counts.

THE COURT: Well, suppose the Government charges a person with only one lie. Don't you think at the trial of the case, since the question of whether it was intentional or not, done with knowledge, don't you think they could show there were multiple lies throughout the testimony, assuming there was no surprise about it; I mean there might be questions having to do with the right to have that disclosed prior to trial or something of that sort. I don't know, but I mean as a matter of evidence, wouldn't it be properly admissible evidence?

MR. SLOMSKY: I would submit to your Honor no. And I say it for this particular reason. I filed a motion for bill of [15] particulars because I wanted to know specifically as to which questions and answers I had to meet in order to defend this case and I believe at the preliminary hearing we got very specific about those questions and answers which the Government contended contained a false statement.

Now at trial for the first time I learned that there are other questions and answers which the Government now wishes to argue to the jury which contain false statements. This did come as a surprise. I thought that under Hockenberry that those specific questions and answers in the indictment would be what I would have to meet; but that just was not the case.

With respect to the knowledge element, certainly there are instances when knowledge is in issue as it was in this case, when other evidence to establish that knowledge can come in. Certainly that's the law. But as I argue in my motion here, let's say Mr. Orem's testimony regarding the

$10,000.00 loan, did not establish that he lent anybody $10,000.00, so I can't see how it's relevant to establish [16] a—making more probable the fact that he told the agents he loaned Harry Brown $10,000.00 or that he tried to locate Harry Brown in Florida in December of 1975.

THE COURT: It did show he was in some way involved in the transaction involving $10,000.00, involving Harry Brown.

MR. SLOMSKY: I don't deny that, sir.

THE COURT: Wouldn't that be some evidence from which a jury could conclude that he may have told the Government agents—isn't it some support for the proposition he would have told the Government agents he would have made the loan of $10,000.00?

MR. SLOMSKY: I would submit no. Why would a person tell an agent, F.B.I. agent that he lent somebody $10,000.00 when, in fact, he never lent that money.

Now you recall the testimony of—

THE COURT: That was one of the questions that the Grand Jury wanted to know. That was cut off for that. There might be a reason that person might tell the F.B.I. agents a lie. There is nothing illegal about that. Under normal circumstances it could [17] possibly constitute an obstruction of justice, but normally if you are just discussing something with them, I don't know that it would constitute a crime. But there might still be reasons for lying to an F.B.I. agent to throw him off the trail.

MR. SLOMSKY: Well, again the issue is whether or not the evidence regarding the $10,000.00 loan somehow was relevant to knowledge. I have argued it's not relevant to knowledge.

Even if it's relevant to knowledge, the circumstances surrounding the obtaining of that loan just came out so sinister at the trial that any value that it might have would be outweighed by the prejudicial effect that it had.

THE COURT: I think I told the jury, at least twice, I believe, that there was no evidence that there was anything wrong or illegal about this, if, in fact, there had been such a transaction or loan, and that its purpose was

not to show that in any way and they can entirely disregard it.

MR. SLOMSKY: Again, as I indicated—

[18] THE COURT: Should disregard any such inference, not that they should disregard the evidence.

MR. SLOMSKY: Again, sir, I would submit to the Court that it was so prejudicial that cautionary instruction would not really alleviate the danger, although I understood the necessity for it at the time.

The evidence regarding that $10,000.00 loan was that Mr. Brown and Mr. Apfelbaum came there and perhaps were given to both men and they left. Mr. Orem was not sure whether or not Mr. Apfelbaum returned that afternoon, although I think the other witness, Mr. Scheuren, said he did return that afternoon and the loan was taken out in someone else's name, who was the District Attorney of Philadelphia.

It just seems to me that circumstances surrounding that loan were just so sinister in the eyes of the jury that it had to clearly contribute to the verdict.

THE COURT: I don't agree with that because we know, as a matter of fact, that a person could be authorized to do this and it [19] would not have constituted a criminal offense and I think I explained that to the jury very carefully that transactions such as that is not illegal in any way.

In the absence of some further evidence, I don't think the jury could have possibly got any different idea from that.

MR. SLOMSKY: Well, really what I am covering now is two issues. I started out with the issue regarding other portions of the testimony, whether or not it was error to admit that testimony, Mr. Orem's testimony.

In the Advisory Committee notes to Rule 403 they define "unfair prejudice" as meaning something that would have an undue tendency to suggest a decision or improper basis commonly, though not necessarily emotional one. Just seems to me that the evidence concerning that $10,000.00 loan, injected into the trial, is an improper issue or something improper was done despite the Court's

cautionary instructions and it was just so prejudicial, even if it did have some relevance to the issue of knowledge, that I would submit to your Honor that it was evidence to admit that particular [20] loan.

* * *

[26] [MR. MADDEN]:

Your Honor, unless the Court has any questions on materiality, I will go on to Hockenberry.

Hockenberry, your Honor, the decision there was a very clear case. What happened was Mr. Hockenberry was brought before the Grand Jury. He was granted immunity. While he was granted immunity he answered certain questions truthfully. Those questions that he answered truthfully dealt with his forging or counterfeiting sworn statements under oath. I believe it was for affidavits. In other [27] words, he admitted certain wrongdoing in the Grand Jury. All right. He was tried on a completely unrelated perjury charge, completely unrelated. He took the stand and testified in his own behalf. After testifying on his own behalf the Government, in cross examination, used his truthful admissions of wrongdoing to impeach him.

Your Honor, the Court felt that for the immunity grant to be coexistent with that Fifth Amendment privilege, the Government should not be allowed to use the truthful admissions of wrongdoing. That is not what we used in this case.

In this case, your Honor, the statements of Mr. Apfelbaum that were presented to the jury, that were complained of by Mr. Slomsky were all false statements, statements that were shown to be false by the other evidence that related in some way to the counts in the indictment. In other words, they related to the fact that he had no idea that there was a loan between Mr. Fitzpatrick and Mr. Brown when, in fact, he did. He was present.

[28] They related to the fact that he never had any financial dealings with Mr. Brown when, in fact, he did. They all relate to whether or not there was a $10,000.00 loan, whether he told anyone there was a $10,000.00, and

whether he ever attempted to locate Harry Brown in Florida.

Now I don't believe that Mr. Slomsky's characterization of being surprised is accurate.

Your Honor, we sat down and in my office, before trial, went through the Grand Jury testimony, at which time we discussed what portions the Government wished to present and Mr. Slomsky made his objections to certain portions. We were able to decide between us ninety percent of the testimony that was presented to the Grand Jury.

Even after that point, your Honor, the Government relented and removed certain other testimony. Mr. Slomsky knew beforehand exactly what the Government intended to introduce at trial and if there was any surprise, from Mr. Slomsky's point of view, it was from his misunderstanding of the law.

[29] Mr. Slomsky apparently would have the Government only introduce evidence to show intent that would be of a neutral nature, either directly relating to the charge in issue or be of such a neutral nature. In fact, the fact is, many times, when we are trying to get intent in a criminal act, the intent is proven by other criminal acts or other acts that, although not charged, tend to show the individual's state of mind.

I think that in this particular case the testimony concerning the $10,000.00 loan clearly showed that there was a basis for Mr. Apfelbaum's statement to the agents.

The agents testified Mr. Apfelbaum told him that the reason he was down there in Florida in December of 1975 was to locate Harry Brown to collect the $10,000.00 loan; that it was an extremely complicated arrangement. He had been making payments on the loan but he would not go into detail. This is what the agents testified.

Now all of that is substantiated, ninety percent is substantiated by Mr. Orem's testimony. There was indeed a $10,000.00 [30] loan. It was indeed prior to the robbery. It was indeed a complicated arrangement inasmuch as it was not in Mr. Apfelbaum's name, but in Mr. Fitzpatrick. Mr. Apfelbaum was indeed making payments on that loan.

I believe it was extremely relevant to show Mr. Apfelbaum's intent, his plan, the knowledge, the absence of any mistake or accident when he appeared before the Grand Jury, as well as proof of motive for lying to the Grand Jury.

Your Honor, I would go on from there, from Hockenberry, unless the Court has anything.

* * *

[32] [MR. SLOMSKY]:

Secondly, with respect to surprise, everything Mr. Madden says is accurate. In other words, we discussed the Grand Jury testimony, which portions I agreed to, which portions I did not agree to, but I think ultimate surprise arose when—really during the opening when I heard Mr. Madden say "pattern of deceit" and et cetera. I think in that regard I learned for the first time that the Government would contend in other portions of the Grand Jury testimony, to this jury, were false beyond those specific ones in two counts.

I thought that the other portions of the Grand Jury testimony that Mr. Madden [32] wished read he desired so because they were relevant to show knowledge or intent with respect to these two particular counts; but I did not know that he would argue pattern of deceit or scheme of deception. I think that's where we differ on this particular issue.

* * *

[35] [THE COURT]:

As to the contention that the evidence was being used in some way in violation of the grant of immunity given to Mr. Apfelbaum before the Grand Jury, it's my understanding of the law, and set forth in Hockenberry, that a grant of immunity never immunizes a person against giving untruthful testimony and therefore I see nothing that would prohibit—I see nothing in the grant of immunity that would prohibit the Government, during the course of a trial, from introducing evidence of testimony given in a Grand Jury and then [36] introducing evidence to show that that was false or not truthful, if it

was in other ways relevant or material to the issues being presented in that case. That is to say that the grant of immunity itself does not mean that you can never use untruthful testimony. Merely prohibits, as I understand it, the use of truthful testimony from being used against the defendant in a subsequent trial. I don't believe that was done in this case and therefore I see no violation of that rule. For that reason the motions for judgment of acquittal and/or for a new trial are denied. Sentencing date has been set for tomorrow. I believe that the presentence report has been prepared and that my clerk has it. I have not seen it at all yet. I will examine it today. Counsel are free to examine it at their convenience also today or tomorrow morning before sentencing.

* * *

SUPREME COURT OF THE UNITED STATES

No. 78-972

UNITED STATES, PETITIONER

v.

STANLEY APFELBAUM

ORDER ALLOWING CERTIORARI

Filed March 19, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

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